No. 3681

United States

Circuit Court of Appeals

For the Ninth Circuit.

C. HENRY SMITH,

Plaintiff in Error,

vs.

A. O. LINDVIG,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

FILED
MAY 14 1921
F. D. MONCKTON,
CLERK

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Messrs. ANDROS & HENGSTLER, Kohl Building, San Francisco, and

Messrs. GOODFELLOW, EELLS, MOORE & ORRICK, Insurance Exchange Building, San Francisco,

Attorneys for Plaintiff in Error.

Messrs, NATHAN H. FRANK and IRVING H. FRANK, Merchants Exchange Building, San Francisco,

Attorneys for Defendant in Error.

In the District Court of the United States, in and for the Southern Division of the Northern District of California, Division Two.

No. 16,124.

A. O. LINDVIG,

Plaintiff,

vs.

C. HENRY SMITH,

Defendant.

Complaint.

Plaintiff complaining of defendant above named, for cause of action alleges:

I.

That at all times hereinafter mentioned said plaintiff was, and still is, a citizen and subject of the Kingdom of Norway, and an inhabitant of the city of Christiania, in said Kingdom of Norway.

II.

That at all times hereinafter mentioned the said

C. Henry Smith, defendant above named, was, and still is, a citizen of the State of California, and an inhabitant of and residing in the city and county of San Francisco, in said state.

III.

That within two years last past defendant collected and received from divers persons certain sums of money for account of the plaintiff, amounting, in excess of all charges and expenses or amounts due said defendant, to the sum of Seventy Thousand Five Hundred Eighty-two and 72/100 (70,582.72) Dollars, no part of which has been paid by defendant to the plaintiff. [1*]

IV.

That before commencing suit herein, plaintiff, at the city and county of San Francisco, State of California, demanded payment of said sum from the defendant.

V.

That defendant has not paid the said sum, nor any part thereof, although the same is due and owing from said defendant to said plaintiff.

WHEREFORE, plaintiff prays for judgment against said defendant in the sum of Seventy Thousand Five Hundred Eighty-two and 72/100 (70,582.72) Dollars, together with interest and costs of suit.

NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys for Plaintiff. [2]

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*Page-number appearing at foot of page of original certified Transcript of Record.

State of California,
City and County of San Francisco,—ss.

B. Lindvig, being first duly sworn, deposes and says: That the said plaintiff, A. O. Lindvig, is absent from the city and county of San Francisco, and is now a resident of Christiania, in Norway, and is therefore unable to verify this complaint in person, wherefore said B. Lindvig verifies the same in the place and stead; that said B. Lindvig is the attorney in fact of said A. O. Lindvig, and as such is informed of the matters and things in said complaint set forth; that he has read the foregoing complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon information and belief, and that as to those matters he believes it to be true.

B. LINDVIG.

Subscribed and sworn to before me this 15th day of December, 1917.

[Seal] CHARLES EDELMAN,
Notary Public in and for said City and County of San Francisco, State of California.

[Endorsed]: Filed Dec. 17, 1917. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [3]

(Title of Court and Cause.)

Bill of Particulars.

In response to the demand for a bill of particulars in the above-entitled cause, the plaintiff states that

the controversy upon which the complaint is based arises out of transactions, all of the details of which are in the exclusive knowledge of the defendant, and the records of the moneys received are in his exclusive possession; that plaintiff has no knowledge of the accounts except such as is derived from statements of account rendered by the defendant to the plaintiff; that no part of said statements so rendered are in the possession of the plaintiff at Christiania, Norway; that in response to the said demand plaintiff files the following bill of particulars, being the best that he can do at the present time, and that so soon as said plaintiff, or his representatives, are accorded an opportunity to examine the books and papers in the possession of said defendant, he claims the right to amend the following bill of particulars or to extend it in such manner as he may feel warranted, after obtaining the necessary information from the books, accounts, and papers, now in the possession of said defendant.

That on the 21st day of November, 1917, the said defendant rendered to the plaintiff's agent, at San Francisco, California, an account entitled:

> "Corrected Statement, A. O. Lindvig, in A/C C. Henry Smith—Final Statement—Supplementing Statement Dated October 15, 1917."

That in reply thereto the attorney for said plaintiff addressed to said defendant a communciation in the following words and figures: [4]

"November 24, 1917.

C. Henry Smith, Esq.,
311 California Street,
San Francisco, Calif.

Dear Sir:

In re: LINDVIG ACCOUNT.

Respecting the account handed to me on November 21st, 1917, entitled, 'Corrected Statement A. O. Lindvig—Account C. Henry Smith—Final Statement Supplementing Statement dated October 15, 1917,' I have to advise you on behalf of said A. O. Lindvig, and on behalf also of his duly authorized agent, Mr. B. Lindvig, that said statement cannot be accepted as correct in any particular.

Before entering upon further consideration of the details of said account, we respectfully call upon you,

1. For the statement referred to therein under the first item of said account, namely,

'July 20. Balance due C. Henry Smith per corrected statement 9/11/17 ..... $24,108.97'

It may be that you have forwarded this statement to Mr. A. O. Lindvig at Christiania, but you can readily understand that the matter cannot be handled from that end because of the present difficulties of communication. It may be many months before we would be able to receive a copy of that statement from Christiania, and as the matter must be handled at this end, we desire a copy of that statement in order that we may examine the same and determine whether or no the said balance with which

you begin your 'Corrected Statement' is a true balance. [5]

2. We desire, also, the statement referred to in your 'Corrected Statement' as 'Statement dated October 15, 1917,' of which the one you have handed us purports to be a supplement.

It must be apparent to you that we cannot pass intelligently upon a 'Supplement' without having before us at the same time the statement to which the supplement refers.

3. We desire also, all vouchers in your possession necessary to support the above accounts.

Without waiving at the present time our right to question any of the items in your said statement, we wish to call your attention to the following items, which upon their face are entirely inadmissible, namely:

A claim for office remuneration re contract hull 154, etc.	$ 10,000.00
Commission Dupont Powder Contract	25,517.80
Commission on inward freight 'Governor Forbes'	2,049.65
Commission on purchase 'Governor Forbes	6,800.00
And your 'Sinaloa' salvage account, which, so far as our present information will permit us to specify, is an overchange of at least, if no more	3,165.27
E. I. Dupont de Nemours account overpayment freight	3,119.12

Your retention of a balance of which you state is an estimated amount for procuring of bookings or freight 5,000.00

We desire to advise you that the above specifications are made without prejudice to our right to further question the items of the said account, which right we are specifically reserving at the present time.

We also call your attention to the fact that many items in said account rendered us are mere summaries, and [6] refer to other accounts for their details.

We note your suggestion of alleged difficulties experienced by you by reason of your former bookkeeper taking employment with Mr. B. Lindvig, but we cannot concede the claims made by you in this regard. The gentleman referred to has been at your service without reserve, and there is nothing in the account that you now present us which warrants the claim you are making in that behalf.

Neither is it our disposition to argue with you the matters referred to by you under your separate letter entitled 'Re Commissions for procuring Dupont contract,' further than to say that your position is untenable.

Anticipating your prompt compliance with the requests hereinbefore contained,

I remain,

Very truly,

Yours, etc.,

NATHAN H. FRANK."

That thereafter, on December 3d, 1917, the said attorney for said plaintiff supplemented said letter of November 24th, with a letter dated December 3d, 1917, in the words and figures following:

"December 3, 1917.

C. Henry Smith, Esq.,
311 California Street,
San Francisco, Calif.

Dear Sir:

In re: LINDVIG ACCOUNTS.

We have to acknowledge receipt of a letter dated December 1, 1917, addressed to us by Mr. William Denman, as a reply to our communication to you under date of November 24th.

We note therefrom that the account submitted to us under the heading 'Corrected Statement A. O. Lindvig in A/C with C. Henry Smith Final Statement—Supplementing Statement [7] dated October 15, 1917'—is not intended as a supplement to the Statement of October 15th, but as a *substitute* therefor.

In this connection we have to advise you that under date of November 27th, 1917, we received a cable from Mr. A. O. Lindvig in which he states that

> 'Smith's general statement dated fifteen ten just received but not correct.'

We are making this reference so that you will understand that neither the original nor the substituted statement will be accepted as a correct statement of your account.

We wish, also, to call your attention to your charge of $6,000.00 remuneration for attending to Steamer 'Regulus', which we understand has been heretofore protested by Mr. Lindvig as not allowable, and which protest is now renewed.

In his letter of December 1st, Mr. Deman, referring to the items on page 2 of my letter of November 24th, says:

> 'Do I understand you to dispute these items, or desire a conference upon them, or to deny absolutely liability for them?'

It seemed to us very clear that when, in that connection we said that 'the items upon their face are entirely inadmissible,' that you would understand that we 'deny absolutely liability for them,' but if it was not so understood before, let it be so understood now.

With the data at hand, we figure that you have still in your possession moneys collected by you for and on account of Mr. A. O. Lindvig, belonging to him and which you have refused to pay over, in the amount of $70,582.72, or thereabouts, as we therefore find ourselves on behalf of said A. O. Lindvig, compelled to demand of you the payment of such moneys to his duly authorized agent, Mr. B. Lindvig, No. 280 Battery [8] Street, San Francisco.

A prompt reply to this would be appreciated.

Very truly,

Yours, &c.,

NATHAN H. FRANK."

NHF:CMH.

That the items stated in said two letters, plus

Twelve Thousand Fifty ($12,050) Dollars, for the details of which we have sent to Christiana, and less the item Three Thousand One Hundred and Nineteen and 12/100 ($3,119.12) Dollars, referred to in our letter of November 24th, 1917, are the items which constitute the bill of particulars, amounting to Seventy Thousand Five Hundred Eighty-two and 72/100 ($70,582.72) Dollars, upon which this complaint is based, viz.:

In the 3d article of the letter of November 24th, items amounting to.....	$55,651.84
In the letter of Dec. 3d, remuneration for attending to Steamer "Regulus"....	6,000.00
Items to be received from Christiania....	12,050.00
	$73,701.84
Less item in letter of Nov. 24, E. I. Dupont de Nemours account overpayment freight	3,119.12
Balance	$70,582.72

That so soon as further information comes to hand upon the subject, plaintiff will be pleased to supplement this bill of particulars with such further statement as the information referred to may warrant.

Respectfully submitted,

NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys for Plaintiff. [9]

To Messrs. Andros & Hengstler, Substituted for William Denman, Esq., and Denman & Arnold, Attorneys for Defendant:

Please take notice that the foregoing is the "bill of particulars as to the account set forth in the complaint in the above-entitled action" demanded by you on the 19th day of December, 1917.

NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys for Plaintiff.

Service of the foregoing bill of particulars is admitted this 26th day of December, 1917.

ANDROS & HENGSTLER,
Attorneys for Deft.

[Endorsed]: Filed Dec. 29, 1917. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [10]

(Title of Court and Cause.)

Exceptions to Alleged Bill of Particulars, Notice of Motion to strike Same from the Files, and Notice of Motion for Further Bill of Particulars.

To A. O. Lindvig, the Plaintiff Herein, and to Messrs. Nathan H. Frank and Irving H. Frank, His Attorneys:

Now comes the defendant above named, and excepts to the alleged bill of particulars heretofore filed in said cause by plaintiff, upon the grounds hereinafter set forth, and notifies you that upon the same grounds, on Monday, January 7, 1918, at the hour of ten o'clock A. M., or as soon thereafter as

counsel may be heard, in the courtroom of said court, in the city and county of San Francisco, State of California, defendant will move said Court to strike said alleged bill of particulars from the files, and for an order requiring plaintiff to furnish a further and proper bill of particulars. The grounds for said exceptions and said motion are as follows:

1. That the document so filed by plaintiff under the title "bill of particulars" does not constitute in any wise such a bill.

2. That the document so filed is argumentative, irrelevant, and not responsive to defendant's demand for a bill of particulars.

3. That since B. Lindvig, as the authorized agent of plaintiff, has made and filed in said cause an affidavit on attachment wherein it is stated under oath: "That the said defendant in said action is indebted to plaintiff in the sum of $70,582.72, gold coin of the United States, over and above all legal setoffs or counterclaims, upon an implied contract for the direct payment of money, to wit, money collected and received for the account of plaintiff in the sum of $70,582.72, and that said contract is payable in this state," and caused an attachment to be issued and levied upon property of defendant, compelling defendant to file a bond in the sum of $80,000.00 [11] in order to procure the release of same, plaintiff may not avoid or escape furnishing a proper bill of particulars upon the ground that "the controversy upon which the complaint is based arises out of transactions all of the

details of which are in the exclusive knowledge of the defendant, and the records of the moneys referred to are in his exclusive possession."

4. That if said sum of $70,582.72 is ascertained or arrived at or derived from any statement or "statements of account rendered by defendant to plaintiff," then plaintiff should specifically disclose from what statement or statements of account so rendered, said sum of $70,582.72 is derived, and how and in what particular or particulars, if any, such statement or statements are not proper.

5. That since said suit was filed in this District, and the complaint verified by said B. Lindvig, and the affidavit on attachment made by him, it is no answer to the demand for a bill of particulars, and no excuse for failure to furnish same, "that no part of said statements so rendered are in the possession of the plaintiff at Christiania, Norway."

6. That the insertion in said alleged bill of particulars of the two letters from plaintiff's attorneys to defendant, dated respectively November 24, 1917, and December 3, 1917, is in no wise an answer to defendant's demand for a bill of particulars, and is an evasion of the same, and improper in that said letters constitute self-serving declarations upon the part of plaintiff, and do not in any wise tend to make clear the basis for plaintiff's complaint or the grounds upon which said sum of $70,582.72 is alleged to be owing by defendant to plaintiff.

7. That defendant is wholly unable, from the complaint and the alleged bill of particulars filed by plaintiff, to know or ascertain upon what plain-

tiff relies to show the liability of defendant to plaintiff in the sum of $70,582.72, and cannot intelligently or properly or at all answer said [12] complaint or frame an issue or issues in said action which can be properly tried by said Court.

Dated: San Francisco, California, January 3, 1918.

ANDROS & HENGSTLER,
Attorneys for Defendant.

[Endorsed]: Filed Jan. 4, 1918. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [13]

At a stated term, to wit, the November term, A. D. 1917, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom, in the City and County of San Francisco, on Monday, the 7th day of January, in the year of our Lord one thousand nine hundred and eighteen. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 16,124.

A. O. LINDVIG
vs.
C. HENRY SMITH.

(Order Denying Motion to Strike Out Bill of Particulars, etc.)

Defendant's motion to discharge attachment and motion to make complaint more definite and certain

and motion to strike out bill of particulars, etc., came on to be heard and after arguments were submitted and fully considered and it was ordered that said motions to discharge attachment and to make complaint more certain be and the same are hereby denied and it is ordered that said motion to strike out bill of particulars, etc., be and the same is hereby denied, without prejudice. [14]

In the Southern Division of the District Court of the United States, for the Northern District of California.

A. O. LINDVIG,

Plaintiff,

vs.

C. HENRY SMITH,

Defendant.

Amended Answer to Complaint.

Now comes the defendant above named, and by leave of Court first obtained, files this his amended answer to the complaint herein, and admits, alleges and denies as follows:

I.

Admits the allegations contained in Articles I, II and IV of said complaint.

II.

Admits that as alleged in the complaint, defendant received for account of plaintiff the sum of $70,582.72, but denies that the same was in excess of all charges and expenses or amounts due de-

fendant, or charges, or expenses or amounts due defendant, and in this behalf defendant alleges:

That within two years prior to the filing of the complaint herein the plaintiff became indebted to the defendant for work, labor and services rendered by the defendant as the agent of the plaintiff, and at his special instance and request, in the amount of $70,582.72, as follows:

One. At the special instance and request of plaintiff, defendant [15] about the 5th of September, 1916, negotiated a contract for the construction of a vessel known as "Hull 154" by the Bethlehem Steel Company, for the price of $775,000, and thereafter and until about the 1st of October, 1917, supervised the construction thereof; that the reasonable value of the services of defendant in this behalf is $10,000, which said sum plaintiff agreed to pay defendant; no part of said sum has been paid.

Two. On the 10th day of July, 1917, at the special instance and request of plaintiff, defendant negotiated and made a contract between plaintiff and Du Pont de Nemours Powder Company for the transportation from the Republic of Chile to San Francisco, California, and elsewhere of 40,000 tons, 10% more or less, of nitrate; that the reasonable value of the services of defendant in this behalf is the sum of $25,410.81, which plaintiff agreed to pay defendant; no part of said sum has been paid, except the sum of $2,482.20.

Three. At the special instance and request of plaintiff, defendant about January 1, 1916, negotiated a contract for the construction of a vessel

known as "Regulus" by the Union Iron Works, for the sum of $450,000, and thereafter and until the 1st day of April, 1917, supervised the construction thereof; that the reasonable value of the services of defendant in this behalf is the sum of $6,000, which plaintiff agreed to pay defendant; no part of said sum has been paid defendant.

Four. At the special instance and request of plaintiff and for and on his behalf, defendant on or about the 8th day [16] of September, 1916, purchased the vessel "Governor Forbes" for the sum of $340,000; that for said services plaintiff agreed to pay defendant the sum of $6,800; no part of said sum has been paid to defendant.

Five. At the special instance and request of plaintiff, defendant for and on behalf of plaintiff, on or about the 20th day of June, 1917, entered into contracts for and on behalf of plaintiff for the salvage of the steamer "Sinaloa"; and thereafter defendant, at the like instance and request of plaintiff, supervised the salvage of said vessel and attended to the repair thereof; that the reasonable value of defendant's services in that behalf is the sum of $3,165.27, which the plaintiff agreed to pay defendant; no part of which said sum has been paid to defendant.

Six. On the 29th day of June, 1914, defendant and plaintiff entered into an agreement in writing, wherein and whereby it was agreed that defendant should receive and retain 5% of the amount of all the freight earned by certain ships owned by plaintiff and operated by defendant for plaintiff; that

5% of the freight earnings of said steamships amounted to a sum far in excess of $21,688.84; that all thereof has been paid defendant except said sum of $21,688.84, no part of which has been paid. That the said amounts so earned by defendant and due him from plaintiff and unpaid, as alleged in subdivisions One, Two, Three, Four, Five and Six hereof, aggregating the sum of $70,582.72, were by defendant deducted from the amounts received by him for account of plaintiff, and were retained by him, and the balance of his collections was [17] remitted by him to plaintiff.

FIRST COUNTERCLAIM.

By way of further defense and counterclaim, defendant alleges that at the special instance and request of plaintiff, defendant about the 5th of September, 1916, negotiated a contract for the construction of a vessel known as "Hull 154" by the Bethlehem Steel Company, for the price of $775,000, and thereafter and until about the 1st of October, 1917, supervised the construction thereof; that the reasonable value of the services of defendant in this behalf is $10,000, which said sum plaintiff agreed to pay defendant; no part of said sum has been paid.

SECOND COUNTERCLAIM.

By way of further defense and counterclaim, defendant alleges that on the 10th of July, 1917, at the special instance and request of plaintiff, defendant negotiated and made a contract between plaintiff and Du Pont de Nemours Powder Company for the transportation from the Republic of Chile to San

Francisco, California and elsewhere of 40,000 tons, 10% more or less, of nitrate; that the reasonable value of the services of defendant in this behalf is the sum of $25,410.81, which plaintiff agreed to pay defendant; no part of said sum has been paid, except the sum of $2,482.20.

THIRD COUNTERCLAIM.

By way of further defense and counterclaim, defendant alleges that at the special instance and request of plaintiff, defendant about January 1, 1916, negotiated a contract for the [18] construction of a vessel known as the "Regulus" by the Union Iron Works for the sum of $450,000, and thereafter and until the 1st day of April, 1917, supervised the construction thereof; that the reasonable value of the services of defendant in this behalf is the sum of $6,000, which plaintiff agreed to pay defendant; no part of said sum has been paid defendant.

FOURTH COUNTERCLAIM.

By way of further defense and counterclaim, defendant alleges that at the special instance and request of plaintiff and for and on his behalf, he purchased the vessel "Governor Forbes" for the sum of $340,000; that for said services plaintiff agreed to pay defendant the sum of $6,800; no part of said sum has been paid to defendant.

FIFTH COUNTERCLAIM.

By way of further defense and counterclaim defendant alleges that at the special instance and request of plaintiff, defendant for and on behalf of plaintiff on or about the 20th day of June, 1917, en-

tered into contracts for and on behalf of plaintiff, for the salvage of the steamer "Sinaloa," and thereafter defendant at the like instance and request of plaintiff supervised the salvage of said vessel and attended to the repair thereof; that the reasonable value of defendant's services in that behalf is the sum of $3,165.27; no part of which said sum has been paid to defendant.

SIXTH COUNTERCLAIM.

By way of counterclaim, defendant alleges that on the 29th day of June, 1914, defendant and plaintiff entered into [19] an agreement in writing, wherein and whereby it was agreed that defendant should receive and retain 5% of the amount of all the freight earned by certain ships owned by plaintiff and operated by defendant for plaintiff; that 5% of the freight earnings of said steamships amounted to a sum of far in excess of $21,688.84; that all thereof has been paid defendant, except said sum of $21,688.84, no part of which has been paid.

WHEREFORE, defendant prays to be hence dismissed with his costs.

ANDROS & HENGSTLER,
GOODFELLOW, EELLS, MOORE & ORRICK,
Attorneys for Defendant.

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

C. Henry Smith, being first duly sworn, deposes and says: That he is the defendant in the above-entitled action; that he has read the foregoing

amended answer to complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and as to those matters he believes it to be true.

C. HENRY SMITH.

Subscribed and sworn to before me this 30th day of January, 1919.

[Seal] T. L. BALDWIN,

Deputy Clerk U. S. District Court, Northern District of California.

Service admitted this 30th day of January, 1919.

NATHAN H. FRANK,
Attorney for Plaintiff.

[Endorsed]: Filed Jan. 30, 1919. Walter B. Maling, Clerk. [20]

At a stated term, to wit, the March term, A. D. 1919, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Friday, the 13th day of June, in the year of our Lord one thousand nine hundred and nineteen. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 16,124.

A. O. LINDVIG

vs.

C. HENRY SMITH.

(Order Granting Plaintiff's Motion for an Instructed Verdict, etc.)

The parties and the jury being present, the trial was resumed. After further arguments by counsel, plaintiff's motion for an instructed verdict was submitted and being considered it was ordered that the motion be granted and the jury was instructed to return a verdict in form as submitted. Thereupon the following verdict was returned by the jury, namely: "We, the jury find in favor of the plaintiff and assess the damages against the defendant in the sum of Seventy Seven Thousand Nine Hundred Thirty Nine & 00/100 Dollars ($77,939.00). W. C. Graves, Jr. Foreman." To which ruling by the Court and to which verdict, the defendant duly excepted. Ordered that judgment be entered in accordance with said verdict and for costs and that the jury be discharged. Ordered that the defendant may have a stay of execution for thirty days. [21]

(Title of Court and Cause.)

Verdict.

We, the jury, find in favor of the plaintiff and assess the damages against the defendant in the sum of Seventy-seven Thousand Nine Hundred Thirty-nine and 00/100 Dollars ($77,939.00).

W. C. GRAVES, Jr.,
Foreman.

[Endorsed]: Filed June 13, 1919. Walter B. Maling, Clerk. [22]

(Title of Court and Cause.)

Judgment on Verdict.

This cause having come on regularly for trial upon the 28th day of May, 1919, being a day in the March, 1919, term of said court, before the court and a jury of twelve men duly impaneled and sworn to try the issues joined herein; Nathan H. Frank, Esq., appearing as attorney for plaintiff and Stanley Moore and L. T. Hengstler, Esqrs., appearing as attorneys for defendant; and the trial having been proceeded with on the 29th day of May and the 3d, 4th, 5th, 6th, 10th, 11th, 12th, and 13th, days of June, all in said year and term, and oral and documentary evidence upon behalf of the respective parties having been introduced and closed; thereupon the plaintiff moved for an order directing the jury to return a verdict in its favor and said motion, after submission, being granted, the jury returned the following verdict which was ordered recorded, namely: "We, the jury, find in favor of the plaintiff and assess the damages against the defendant in the sum of seventy-seven thousand nine hundred thirty-nine and 00/100 dollars ($77,939.00.) W. C. Graves, Jr., Foreman," and the Court having ordered that judgment be entered in accordance with said verdict and for costs:

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered

by the Court that A. O. Lindvig, plaintiff, do have and recover of and from C. Henry Smith, defendant, the sum of Seventy-seven Thousand Nine Hundred Thirty-nine and 00/100 ($77,939.00) Dollars together with his costs herein expended taxed at $471.25.

Judgment entered June 13, 1919.

WALTER B. MALING,

Clerk. [23]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 16,124.

A. O. LINDVIG,

Plaintiff,

vs.

C. HENRY SMITH,

Defendant.

Engrossed Bill of Exceptions.

BE IT REMEMBERED that the above-entitled action came on regularly for trial on the twenty-eighth day of May, 1919, before the above-entitled court, Honorable WILLIAM C. VAN FLEET presiding, and a jury duly empaneled and sworn, Nathan H. Frank, Esq., and Irving H. Frank, Esq., appearing as counsel for plaintiff, Messrs. Andros and Hengstler, and Messrs. Goodfellow, Eells, Moore & Orrick appearing as counsel for defendant, and that the following proceedings were had:

Testimony of C. Henry Smith, in His Own Behalf.

C. HENRY SMITH, defendant in said action, was called in his own behalf, was sworn, and testified as follows:

Direct Examination.

I reside at 2164 Hyde Street, San Francisco, and have been a resident of San Francisco ever since 1904, when I first came here.

In 1908 I went into the importing and exporting business on my own account and have been engaged in carrying on that business ever since. [24—1]

In 1913 I commenced to organize the company that afterwards was known as the Baja-California Company.

I organized the company. After I and friends of mine in San Francisco had subscribed seventy-five thousand ($75,000.00) dollars towards the stock of this company, I sent Captain M. O. Rustad to Norway, for the purpose of interesting Norwegian capital. The company was to be incorporated as a Norwegian corporation. While in Norway, Captain Rustad met Mr. A. O. Lindvig, a large ship owner. Captain Rustad then cabled me asking if he should connect with Mr. Lindvig and investigate his standing, and I cabled Captain Rustad to do so. I sent Captain Rustad to Norway in the early part of 1914, and I went over there myself in the early summer of 1914.

On June 29, 1914, and while in Norway, I entered into the following agreement with Mr. A. O. Lindvig:

(Testimony of C. Henry Smith.)

"Mr. A. O. Lindvig, of Christiania, and Mr. Henry Smith of San Francisco, have this day made the following agreement with regard to A/S Baja California, a steamship line to operate steamers between Mexican and Central—American ports—and West Coast of United States as well as British Columbia.

"For the steamship line as aforementioned Mr. Smith is to act as general-agent with authority to appoint sub-agents, when required for securing cargo northbound and southbound, fix charters, when sufficient inducements offer as well as make all necessary arrangements for docking and clearing of the steamer at the respective ports of call.

"It being also understood that the general-agent or sub-agents are to make contracts at the lowest competitive rates, for tallying and stevedoring. On all freight earned a commission of 5 (five) per cent is to be allowed Mr. Smith including any allowance or allowances made to sub-agents; besides this remuneration an allowance per steamer is to be made to cover incidentals, stamps and other disbursements for traveling expenses, as required, subject to special agreement.

"In the event any steamer or steamers of the A/S Baja California are fixed by Mr. Smith for other [25—2] voyages than as hereinbefore mentioned, or on time-charter a commission of 2½ per cent on the freight earned is allowed.

"This agreement is to remain in force for a

(Testimony of C. Henry Smith.)

period of 3-three years provided the line referred to above is maintained so long.

"Kristiania, 29th June, 1914."

On July 23, 1914, while at Christiania, I entered into the following agreement with Mr. A. O. Lindvig:

"It is hereby agreed between Mr. A. O. Lindvig, Christiania, and C. Henry Smith, San Francisco, with regard to the handling of the steamers of the Baja California line operating out of Pacific Coast ports, that C. Henry Smith be authorized to charge the actual outlays for stamps, telegrams and other incidental as well as initial expenses incidental to making all necessary arrangements in Central America for the handling of the steamers there. These outlays and expenses are calculated to amount to about doll. 45 per steamer per month.

"Furthermore Mr. Smith may apply for a postal subsidy from Mexican Government and the expenses in this connection expected to be about doll. 100 gold to be covered by the Baja California line.

"Christiania, July 23d, 1914."

Two vessels were built for the Baja California at Sunderland, England. These two were "Baja California" and "Sinaloa."

On November 30, 1915, I cabled Mr. Lindvig:

"Have option six thousand (6000) tonner United Engineering Works here model and arrangement like steamer Sverre and oil burner delivery within twelve months four hundred and fifty thousand

(Testimony of C. Henry Smith.)

dollars 'tween deck and electric light fifteen thousand extra. I can guarantee one hundred thousand dollars subscription of stock this city, if wanted, and further subscription South America Builders have option steel only few days so please telegraph quickly if interested. In case two boats contracted sixteen months second delivery but price then nine hundred and thousand dollars including tween decks and all."

On December 3, 1915, I cabled Mr. A. O. Lindvig:

"Six thousand tonner deliverable 10/12 months arranged for coal and oil otherwise good specifications price lowest and strictly net recommending contract [26—3] offer one hundred thousand dollars stock some of Dupont of officials also inclined."

Mr. FRANK.—Now, if your Honor please, I renew my objection upon the face of that telegram, because the telegram provides that the amount is strictly net.

On December 6, 1915, I cabled Mr. A. O. Lindvig:

"Six thousand tonner lowest price account steel now advanced and mills busy two years guaranteed speed nine knots. Will subscribe hundred thousand dollars stock. Some of Dupont officials will also take shares. American built steamers considered higher value otherwise refer cable third."

On December 7, 1915, Mr. A. O. Lindvig cabled me:

(Testimony of C. Henry Smith.)

"Accept 6000 tonner built. Highest class Lloyds case need four hundred fifty thousand dollars provided good speed specifications delivery latest October 1916 and Clean terms contract telegraph."

On December 7, 1915, I cabled Mr. Lindvig:

"Contract six thousand tonner reading ten twelve months builders say however October delivery very likely. Clean terms otherwise built highest class Lloyds Veritas and Norwegian Board of Trade subject American requirements. Telegraph."

By "Clean Terms" is meant that the contract must be clear, so that the builders, on account of hard terms in it, if the price of materials went up, could not get out of it, if they liked. It has nothing to do with any commission.

On December 9, 1915, I cabled Mr. A. O. Lindvig:

"Please telegraph whether acceptance six thousand tonner O. K."

And on December 10, 1915, Mr. Lindvig cabled me:

"Six thousand tonner accepted according exchanged telegram."

On December 10, 1915, Mr. A. O. Lindvig wrote me as follows:

"Messrs. C. Henry Smith Inc.,

"San Francisco.

"Dear Sirs: [27—4]

"I beg to confirm my letter of 1st inst. and

(Testimony of C. Henry Smith.)

further telegrams exchanged as per copies enclosed,—

"3/M Schooner 'Archer.' I note you have purchased this vessel and have retained $9,000 off the remittance per 'Sinaloa' and 'Baja' in settlement of my interest. I shall thank you to send me further details concerning the purchase and trade she was intended for.

"6000 Tonner. I note the builders have accepted my offer of $450,000.00 for one 6000 tons steamer, built highest class Lloyds, good specifications, fitted for both oil and coal burning, delivery to take place within October next year, and now await to receive contract with full particulars.—I note, you are willing to take interest for $100,000,—and that others are also inclined to take some stock, but as I have not yet made up my mind if the steamer is going to enter the 'BAJA CALIFORNIA' Company, I shall write you later on this subject.—I am sorry my telegram of 7th did not reach in ample time to secure the second steamer."

We bought her for the Mexican trade. I held her for two or three weeks and sold her and sent Mr. Lindvig half the profits, one-half of $12,000. We had bought her for $18,000, and the $9,000 mentioned in the above letter was retained by me off the remittance was for Mr. Lindvig's half of the purchase price.

On December 14, 1915, I wrote Mr. A. O. Lindvig:

"We beg to hand you herewith copy of telegrams exchanged in connection with the 6000 ton steamer we now contracted with the United Engineering Works of this City. The price $450,000.00 was the lowest one obtainable and you may rest assured we endeavored to get it reduced, but on account of the steel being advanced and the contractors only had a few days left on the option of the material, it was impossible to get a lower price, $15,000.00 is to be added to the price just mentioned for wooden tween-deck and one 7 K. W. electric set, wired throughout and installed. The steamer will be practically a duplicate of the 'Sverre' with the following exceptions:—

"Forecastle to be subdivided for light wooden bulkheads, so that the crew may be provided with separate rooms to accommodate 2 in each on the port side and the firemen similarly situated on the starboard side. Double bottom to be arranged for carrying fuel oil, which would necessitate extra work to be done, or same as tank work. Stern frame to be of cast steel. [28—5]

"It was proposed to build two ships, a duplicate of the above named steamer, including wooden 'tween-decks and 7 K. W. electric sets for the sum of $905,000.00, delivery of one ship in ten to twelve months from date of acceptance and signing of the formal contract and specifications. Delivery of the second ship to be in 16 months from same date, but the price and delivery of second ship was conditionally however, to be United Engineering

Works being about to obtain steel necessary under the option they were holding.

"We regret exceedingly that your proposition to accept the 2 steamers with delivery of the 2 steamers in 14 months, came a few hours too late for acceptance here. The Company advised us a couple of days ago that they were offered a considerably higher price for a steamer of this type with delivery in 12 months and asked us if we would accept 16 months delivery with the reduction of $40,000.00, so it will be seen that we could do nothing in regard to this other boat. We advised of course, that we would not accept any delay.

"Terms of payment to be one twelfth (1/12) part of the total sum paid on signing of the contract and the remaining 11/12 to be paid in equal time payments; the final 1/12 to be paid on delivery of ship after a successful trial trip having passed Lloyd's inspection and the United States Steamboat Laws:—

"Payment to be specified, condition that the contractor has expended an amount for material and labor in proportion to the amount of payment.

"Should the contractor fail to complete the ship in the time called for in the contract, a penalty has been fixed at $250.00 per day for each working day delayed. On the contrary, he is to receive a bonus of $250.00 per day for each day delivery is made before the specified time.

"The Company advised that the prints and specifications have been sent to Lloyd's New York

(Testimony of C. Henry Smith.)

City, for approval and we expect these to be returned sometime next week when we shall have them forwarded at once.

"The steel has been ordered and will be shipped in the course of the monty; the drawings of the machinery now being made.

"Under separate cover we are sending you copies of the midship section, or the proposed midship section for Lloyd's approval.

"We are prepared to arrange for subscription of stock in this steamer to the extent of $100,000.00, as advised in the cables and we should therefore, like to know at an early date the name of the Company [29—6] and how these subscriptions should be made."

On December 3, 1915, Mr. Lindvig cabled me:

"Have just contracted two steamers three thousand three hundred tons each four hundred fifty thousand dollars including electric light and delivery within eight months consider same price one six thousand tonner too much but inclined pay four hundred thousand provided good specifications and delivery ten months."

On December 23, 1915, in my own name as the principal, I entered into a contract with the United Engineering Works for the construction of the 6000 ton vessel afterwards called the "Regulus." I did this because my principal was a foreigner, and the United Engineering Company wanted my name on the contract. [30—7]

"THIS AGREEMENT, made and entered into this twenty-third (23) day of December, Nineteen Hundred Fifteen (1915), at the City and county of San Francisco, State of California, by and between C. HENRY SMITH, INC. a corporation, organized and existing under and by virtue of the laws of the State of California, having its principal place of business in the City and County of San Francisco, in said State, (hereinafter called Smith), and the UNITED ENGINEERING WORKS, a corporation organized and existing under and by virtue of the laws of the State of California, having its principal place of business in the City and County of San Francisco, in said State, (hereinafter called United).

WITNESSETH.

That the parties of this agreement, for and in consideration of the mutual covenants and promises on the part of each to the other herein contained, have agreed, and hereby do agree, as follows:

ONE. The said United Agrees to construct or cause to be constructed, for the said Smith, a Steam Vessel, in strict accordance with the signed plans and specifications, which are hereto attached, and made a part hereof.

TWO. The said Smith hereby agrees to pay to said United for said vessel, at the times and in the manner hereinafter specified, the sum of FOUR HUNDRED and FIFTY THOUSAND (450,000) Dollars.

THREE. It is expected that said vessel will be ready for delivery in from ten to twelve months after the date of the signing of this contract and specifications, but [31—8] in consideration of the agreement herein contained on the part of the said Smith to pay a like sum to said United for each and every day before the expiration of said twelve months that the said United is prepared to make delivery in accordance with the terms of this contract, the United agrees that, if it fail to complete the said vessel within twelve months from said date (unless delayed by reason of excepted causes hereinafter mentioned, or of the non-payment by the said Smith in the manner and at the times herein provided of moneys due under the terms of this contract) it will pay to the said Smith the sum of Two Hundred and Fifty (250) Dollars for each working day beyond said twelve months that the said delivery is so delayed, and the said Smith hereby agrees to pay to said United the sum of Two Hundred and Fifty (250) Dollars for each and every working day before the expiration of said twelve months that the said United may tender or offer the said vessel to said Smith in accordance with the terms of this contract.

FOUR. The said Smith shall pay to the said United the said sum of Four Hundred Fifty Thousand (450,000) Dollars at the time and in the manner following:

Thirty-seven Thousand Five Hundred (37,500) Dollars on the signing of this contract; and the

balance in equal payments of Thirty-seven Thousand Five Hundred (37,500) Dollars at such times as said United shall exhibit to said Smith its daily record of time and material applied to the construction of the said vessel, showing an amount so applied of Twenty-eight Thousand One Hundred and Twenty-five (28,125) Dollars (excluding therefrom all overhead expenses, superintendence costs, and all profit), with the exception [32—9] that the final payment of Thirty-seven Thousand Five Hundred (37,500) Dollars shall be made after a successful trial trip and the tender of delivery of said vessel in accordance with the terms of this contract.

All of said payments, on account of the Four Hundred and Fifty Thousand (450,000) Dollars, shall, when made, be absolute, unless the United shall, at its election sell the said vessel upon the default of said Smith, in which event, the conditions as set forth in the last paragraph of clause Four of this contract shall be in force. The full and complete payment of the said purchase price shall be a condition precedent to any right on the part of the said Smith to said Vessel, or any part thereof.

Should the said Smith at any time fail to make payment in the manner and at the times hereinabove provided, then the said United may stop work on said vessel until such payment is made, and any delay so caused shall serve to extend for a corresponding length of time the twelve months

provided for the completion of said work, with the obligations, *neverless,* on the part of the said Smith to pay said Two Hundred Fifty (250) Dollars per day additional for each day the said work is delayed on said account.

Should, however, the said Smith continue in default for any such payments for the period of thirty (30) days, then said United shall be at liberty to decline to further proceed with the building of said ship for said Smith's account, and all interest of every nature, whether legal or equitable, of said Smith in said vessel, or the sums paid thereon, shall cease and be at an end, subject, however to the conditions of the last paragraph of clause Four herein. [33—10]

If, however, the said United should dispose of the said vessel by sale, after default on the part of said Smith, it is agreed that in the event the sum realized on said sale exceeds the contract price of the said vessel as provided herein, then the United will return to the said Smith a sum equal to the amount paid by him to the United to the date of the last payment by the said Smith, less Two Hundred Fifty (250) Dollars per day for said delay, as above provided. In the event that after the sale of the said vessel by the United, the proceeds of the said sale, plus the sum already paid to the said United by said Smith, total less than the contract price, then the said Smith shall pay to the said United a sum equal to the difference between the said contract price and the total of

the sum of said proceeds of the sale and payments made by said Smith to the date of his default.

FIVE. If while the said vessel is in the course of construction the same shall be damaged by reason of any of the exceptions hereinafter contained, the said Smith shall pay for all extra work, labor and materials necessary to repair such damage and to restore the vessel to the same condition in which it was at the time of such accident or other cause of damage, at the then market rate for such material and labor, plus ten (10) per cent; but if said damage be so great as to render it in the opinion of the United unprofitable for said United to reconstruct said vessel, then the United may abandon the further construction of said vessel. In the event of damage as in this article provided, whether the further construction of said vessel be abandoned or repaired as herein provided, the said United shall retain the moneys paid on account and shall turn over to said Smith, out of the net proceeds of any insurance that said United may recover against such loss, such proportion as may be fixed by the respective [34—11] interests of such parties.

The insurance effected upon said vessel by the United, shall be for full contract price and all premiums are to be paid by said United.

SIX. The title to said vessel, and to each and every part thereof shall be and remain in the said United until complete and final payment of the purchase price as herein provided, save that, in

the event of said United shall cease work on said vessel for a period of Thirty (30) days for any reason not enumerated in paragraph "Eight" and not due to the default of the said Smith, then all of the title to the said vessel, so far as constructed, shall be transferred to the said Smith, and the said United shall rent to the said Smith, for a reasonable rental, all of its tools, yards, appliances and equipments necessary to build the said Vessel, and the said Smith may complete or procure the completion of the said vessel in such manner as he chooses.

SEVEN. The said United agrees to deliver the said vessel to the said Smith free and clear of all liens, and further agrees before the delivery of the said vessel under this contract to have the same inspected by Lloyd's Agent and by the United States Steamboat Inspectors, and to have issued to said steamer the proper Certificate of Inspection giving said vessel under Lloyd's a classification of 100 A–1, and also a proper certificate under the United States Steamboat Inspection Laws.

EIGHT. Acts of God, fire, earthquake, strikes, lockouts or labor troubles of any nature, or any accident whether of the same kind as those hereinafter enumerated or not, and not arising from negligence of said United, always throughout this agreement excepted. [35—12]

NINE. Any dispute arising between the parties hereto with respect to the question as to whether or no the said work is being performed in accordance

with the specifications, shall be referred to a board of three (3) arbitrators at the port of San Francisco, for final decision, one to be appointed by the United and the other to be appointed by the said Smith and the third to be chosen by the two so appointed.

IN WITNESS WHEREOF, said C. Henry Smith Inc. and the said United Engineering Works, have hereunto caused their names and corporate seals to be hereto attached the day and year first hereinabove written.

UNITED ENGINEERING WORKS,
By SAM J. EVA, President.
By R. W. CURTIS, Secretary.
C. HENRY SMITH, INC.,
By C. HENRY SMITH, Pres.
By ————————. [36—13]

On January 13, 1916, I cabled Mr. A. O. Lindvig:

"SIX THOUSAND TONNER SENDING SPECIFICATIONS PLANS ALL APPROVE BY LLOYDS OBTAIN LIST SPARE PARTS STEAMER SVERRE WHEN BUILT AND MAIL AT ONCE. WILL YOU SEND INSPECTOR OR SHALL WE APPOINT ONE HERE."

On January 14, 1916, I wrote to Mr. A. O. Lindvig:

"In our telegram of yesterday we asked you to obtain a list of spare parts which were supplied the steamer 'Sverre' at the time she was built.

"The occasion for this request is that the United

Engineering Works have submitted to us an offer of $4,400.00 for a list of spares, as per enclosed copy.

"As we have insisted that there is hardly a freight steamer being built in Great Britian that has not the customary spares includes in the contract price, they have agreed to the steamer 'Sverre,' as this boat was given as the model in the specifications to a large extent.

"In regard to the inspector for the boat during the time when built, we would say that it would be essentially necessary to have one here and we shall appoint an inspector in San Francisco, or please advise us if you decide to send one out. We may say that all steamers which are now being built in San Francisco in various yards, have two or three inspectors on each boat*h*, although all of those steamers are being built according to the highest class of Lloyds rules.

"Yours very truly,
"C. HENRY SMITH, INC.
"By C. HENRY SMITH.

"P. S.—In the contract with the United Engineering there was provided a 7 K. W. electric plant, which was at the time thought large enough for light and wireless. However, the engineer with whom we went through the specifications in his opinion thought this plant was not sufficient, and we have therefore taken the liberty to arrange for a 10 K. W. set to be installed in place of the plant as aforementioned, with additional outlets and lights, at an additional price of $350.00, of which we hope you will approve."

(Testimony of C. Henry Smith.)

On February 11th, 1916 I wrote to Mr. A. O. Lindvig:

"February 11, 1916.

"A. O. Lindvig, Esq.,

"Kirstiania, Norway.

"Dear Sir: [37—14]

"We telegraphed you on the 5th, asking you to remit by telegraph $30,000.00 account of the steamer now building at the United Engineering Works, which we have received, and we shall render you account in due course.

'SINALOA.'

"The 'Sinaloa' arrived in Victoria on the 4th, in the afternoon, so far as we have been able to ascertain. We thought probably that the steamer had been delayed on account of snow storms which have been very prevalent in the north lately, as we had no wire as to the arrival. The reason for this was that all wires were down and we were unable to communicate with the agents up there, hence our cable to that effect. We sent you, however, a cable on the 8th, stating that the steamer arrived O. K."

On February 19th, 1916, Mr, Lindvig wrote me:

"Kirstiania, 19th February, 1916.

"Messrs. C. Henry Smith, Inc.

"San Francisco.

"Dear Sirs:

NEW BUILDING 6000 TONNER.

"I beg to refer to your cable of 8/12 1915—contract six thousand tonner reading ten twelve months

builders say however October delivery very likely clean terms otherwise built highest class Lloyds Veritas and Norwegian Board of Trade also subject American requirements—to which I replied—6000 tonner accepted according exchanged telegrams. In the specifications, however, I am surprised to find that neither the Norwegian Veritas nor our Board is mentioned. You will understand, I must have the boat fitted out according to the Norwegian Board of Trade requirements. I don't find the specifications satisfactory, and the contract is only made out for the benefit of the builders, so I am absolutely in their hands, if any trouble or accident should happen. I therefore cabled you on the 17th inst.—'general arrangement plan 6000 tonner not received. Contract not satisfactory. Section 3 contract fixed time for delivery must be stipulated. Section five very unsatisfactory, try exclude. Section six very unfavorable must be altered builders must deliver surety bonds for amounts paid as usual specifications hull and machinery not satisfactory posting additional details.' Enclosed you will find my remarks about the contract as well as the specifications. I trust you will put these before the builders and get a satisfactory arrangement. I never had a contract yet, where no surety were placed by the builders against payments made by the owners. I trust you will look into this matter, and awaiting your good news, I am,

"Your truly,

"A. LINDVIG.

(Testimony of C. Henry Smith.)

"If no date of delivery stipulated owners will have to pay $250 per day for time saved within the [38—15] twelve months and this can according to paragraph 3 amount to a considerable amount. If the vessel is finished in 10 months $15,000. If these terms cannot be altered to our satisfaction, I consider it best to sell the contract. Please telegraph result."

On February 23d, 1916, I wrote to Mr. A. O. Lindvig:

"A. O. Lindvig, Esq.,

"Kristiania, Norway.

"Dear Sir:

"We beg to enclose herewith receipt covering third payment on the steamer building at the United Engineering Works.

"Referring to your cable dated the 18th, reading as follows:

"'GENERAL ARRANGEMENT PLAN 6000 TONNER NOT RECEIVED STOP CONTRACT NOT SATISFACTORY STOP SECTION THREE CONTRACT FIXED TIME FOR DELIVERY MUST BE STIPULATED STOP SECTION FIVE VERY UNSATISFACTORY TRY EXCLUDE STOP SECTION SIX VERY UNFAVORABLE MUST BE ALTERED STOP BUILDERS MUST DELIVER SURETY BONDS FOR AMOUNTS PAID AS USUAL STOP SPECIFICATIONS HULL AND MACHINERY NOT SATISFACTORY POSTING ADDITIONAL DETAILS' which we have noted in every

detail. In this connection beg to advise that the United Engineering Works have sold out their plant to the Union Iron Works. The Union Iron Works is owned by the steel trust.

"Surety bonds for amounts paid on ships built in this country are not customary, and we considered the United Engineering Works able to complete and carry out the contract, and now that the Union Iron Works is behind the operating of this plant we would consider a request of this character superfluous. However, we are taking the matter up with Mr. Christy, formerly Manager of the United Engineering Works, and now in the employ of the Union Iron Works, and I am to meet Mr. MacGregor, the President of the Company to-morrow, and Mr. Christy assures me that he does not think there will be any objection to changing the contract as you suggest.

"At the time we were cabling you on this contract during the last days in November, you will recall that we were quoted this price, owing to the fact that the Company had an option on Steel, expiring a few days later, or, we believe, the date was December 1. The price on steel advanced considerable after that date, and we can inform you that a contract has not been signed for a similar steamer with 17 months delivery at the price of $650,000.00. We have been offered this steamer repeatedly by the Union Works, but thought the price was perhaps a little higher than the Company would like to go.

"The United Engineering Works at the time we made the contract, or some days later, were negotiating [39—16] with the Union Iron Works with a

view to sell their plant, of this we did not know at the time, and we believe these people or the owners of the United Engineering Works tried to get out of the contract or get it cancelled in some way. We had to see our Lawyers several time as the form of contract they put before us was impractical and we finally signed the form we sent you in order to avoid delay.

"The point in this contract was of course if payments were not made, or delayed, it would delay for the same time the construction of the vessel, and as we did not think there would be any trouble regarding the payments we signed the contract.

"However, the Union Iron Works have promised to meet us in every way and as it is a very large concern we can rely on it that the vessel will be completed on time.

"We have been promised delivery of the boat in 12 months as per contract.

"Your very truly,
"C. HENRY SMITH, INC.
By————————."

On March 28th, 1916, I wrote Mr. A. O. Lindvig:

"March 28, 1916.

"A. O. Lindvig, Esq.,
"Kristiania, Norway.

"Dear Sir:

"NEW BUILDING 6000 TONNER

"We are in receipt of your letters of February 19th, 22nd, and 28th, and also March 1st, and we have

in reply thereto sent you telegrams as per copies enclosed in to-day's mail.

"We are in receipt of a cablegram from you dated March 25th stating that you were posting specifications and list of spare parts of the 'Sverre.' We shall in reply say that we have of course contracted for a steamer here along the lines of the 'Sverre' and can only say that we will see that we get such a steamer, and we believe this will be satisfactory to the owners.

"As to surety bonds we enquired at the time in this City, when you brought the matter up, if such bonds were customary on this coast and we were informed that they were not with responsible builders. At any rate at the time we were contracting for the steamer you did not mention anything about surety bonds. Had you done so we should of course got the builders to pay for such bond, the cost of which is $1,125. [40—17]

"The Union Iron Works Company is now building 23 large steamers, some of them for Norwegian account as stated, we believe for Jebsen of Bergen. The contract for the two steamers were placed by Henry Lund Company of this City for the aforementioned firm. There are no surety bonds for any of the steamers building at the Union Iron Works Company, and we therefore believe it is only wasting money for us to do so. At all events there is no cause for excitement.

"As regards your specifications:

"No. 1. The builders undertake to deliver a vessel like the 'Sverre.' We beg to enclose copy of the original agreement which explains itself.

Deck Erections: 'Tween-deck in holds. The revised plans which we sent you a few days ago show the 'tween-deck laid as agreed of 4" Oregon Pine bolted to the hold beams. We have accepted these plans subject to specifications and contract.

Doors: Tonnage openings will be provided in the poop and in the after bulkhead of the bridge.

"3. *Load Line:* Will be given according to Norwegian Rules. The free board mark will be according to British Rules as specified.

Certificates: For Suez and Panama will be supplied by the owners.

Bitts, Fairleads & Deck Fittings: Are larger than usual.

Bulkhead: Will be submitted to Lloyd's local surveyor for consideration. If acceptable to them the Bulkhead will be left out and web frame substituted. We have telegraphed you in this respect so that we can make necessary arrangements.

"4. *Bunkers:* There is a bunker on the port side.

"6. *Cargo Battens:* Are provided for.

Ceiling: Tank tops will be ceiled right over therefore there will be no margin angle.

"7. *Cementing:* Noted.

"8. *Double Bottom:* Will be same as 'Sverre,' and will be arranged for carrying oil. The tank

tops will be doubled riveted. All [41—18] other riveting about the tanks will be as customary for carrying oil. Lloyds will permit oil in double bottoms. Filling and suction arrangements will be made through suitable manifolds, as customary here. Method of access will be suitable to Llyods as all pipe connections will be.

The double bottom vent pipes will be as large as the filling pipes, which are usually 3½" into each section of the double bottom.

"9. *Fresh Water Tank:* Will be cement washed.

"10. *Hatches:* 12' 6" x 17' 0". Hatch will be in ship.

"11. *Position of accommodation Ladder:* Does this mean ladder or ladders from main deck to the bridge deck. In the completed plans all such things will be indicated.

"14. Size of Bunks noted.

"15. *Tunnel:* Propellor shaft will draw into hold without removing tunnel top plates.

"16. Ventilators to holds will be 18". There is a ventilator at the further end of each tunnel. Bunkers will be ventilated.

Winches: Steam pipes and valves will stand more than 130 pounds. Exhaust is lead to main condenser. Each Winch will have a separate valve.

Windlass: Will exhaust on each side of the vessel.

"18. *Boats:* Captain Rustad will supervise the equipment. Iron deck fittings will be galvanized. Sanitary salt water tanks, etc., will be provided, to be pumped up from engine room.

Hospital is not provided for in the specification but will receive attention.

Other items under this number will be as requested.

ENGINE SPECIFICATIONS.

Page

"3. Contractor will alter for additional compensation. [42—19]

Page.

"5. Provided.

"6. Provided.

"7. Provided.

"7. Provided.

"8. Provided.

Armoured hose not provided here.

Metallic packing provided.

"9. Provided for.

Lubrication Suitable lubricator will be provided.

"10. Pipe arrangement not yet made. Observations noted in connection therewith.

"11. Boiler covering will be on the backs of the boilers.

Concerning evaporator, spare propeller, propeller shaft, etc., or must be guided by the "Sverre" equipment.

The electric plant will be complete, covering all points mentioned.

"15. Items referred to in specifications will be shown in the plans as things progress, as usual.

Note.—Contractors undertake to deliver a vessel like the 'Sverre.'

"As to time of delivery we can only refer to the cables exchanged at the time of contracting, when we stated ten to twelve months delivery. The builders undertook to, deliver the vessel in twelve months and pay a penalty of $250.00 per day for every day thereafter, in case that steamer is not delivered. In case of delivery before expiration of this time, we to pay them $250.00 per day. Should the steamer be delivered in November, which we have been informed, however, will not be the case, as the builders have informed us that they will deliver on time, as per contract, but, should they deliver before this time, we do not see how any loss can occur, as the steamer should be well able to earn considerably more than $250.00 per day.

"We shall send you details and plan of the [43—20] fittings, etc., as soon as we receive them from the builders, and also other details as required.

"Yours very truly,

"C. HENRY SMITH, INC.,

"By ————————.

"CHS/B.

"Enc.

"P. S.—According to enclosed confirmation the builders are to deliver steamer also to Norwegian Board of Trade requirements."

On February 22, 1916, Mr. Lindvig wrote me:

"Your favours of 14th, 19th, and 20th 1. m. to hand and contents carefully noted. In regard for

(Testimony of C. Henry Smith.)

inspector for the boat during the time when built, I should think, that our Captain Rustad (as mentioned before) together with Lloyds representative would be enough and quite satisfactory to the owners. I have never heard of two or three inspectors on one boat. I note in the contract with the United Engineering a 7 K. W. electric plant was provided. I quite agree with your engineer that 10 K. W. plant should be installed for the additional price of $350. I note the price asked for additional spare gear amounting to $4400. I have never had a contract yet, where not spare propeller etc. as mentioned in your favor of the 10th 1 m. were supplied by the builders, without extra charges, and trust you will look into this matter. Our agreement is spare ports as s/s 'SVERRE,' and this I think ought to be sufficient, as most of the above spare ports are mentioned in this steamers contract. I note you say the new hull scantlings will weigh some fifty tons more than the 'Sverre.' I do not quite understand the meaning of this. Sure this will have nothing to do with the deadweight capacity of the steamer as she is contracted to carry 6000 tons in which hull scantlings and wood 'tween decks should be excluded.

"I trust that the United Engineering will work out the lines of the steamer, so that she gives satisfactory speed, dead-weight and suitable freeboard."

On December 21, 1915, Mr. Lindvig wrote me:

"6000 tons vessel. I have decided not to let this vessel go into the 'BAJA CALIFORNIA' company,

(Testimony of C. Henry Smith.)

but to form a new company, which I have thought of naming the joint stock company 'PACIFIC.' I enclose copy of subscription [44—21] circular, from which you will note, that the joint-capital is placed at Kr. 850,000—as a mortgage loan will be raised for the rest of the purchase price. The value of the shares will be Kr. 5000. each. Up to the present has been subscribed Kr. 635,000, and I have therefore for the present reserved for you an amount of up to Kr. 200,000, and will be obliged for your telegraphic reply upon receipt hereof, if you are considered included herewith. The money, as you will see, is to be paid with 10% on the 15th of each month figured from and including January 15th, 1916. For the present I have asked you to pay the first installment and in order to avoid the heavy expense connected with telegraphing the money, I will be thankful to you. If you will until further pay installments due, and I will after new year send you by letter a large remittance on account. Likewise you can then in future retain remittances per 'BAJA C.' and 'SINALOA' and by telegraph advise me, that same have been collected, whereupon transfer will take place here at current rate of exchange." [45—22]

Q. Now, Mr. Smith, he speaks here of the fact that the capital is placed at 850,000 crowns and he has reserved for you an amount up to 200,000 crowns. How much is 200,000 crowns in our money?

(Testimony of C. Henry Smith.)

A. About $54,000.00—at that time it would be $54,000.

Q. You have stated in your telegram to him, that you would subscribe $100,000. A. Yes.

Q. But he did not reserve but about $54,000.00 to you? A. Yes.

Q. Now, on January 11, 1916, did you send Mr. Lindvig a cablegram of which this is a copy?

Mr. FRANK.—The same objection, immaterial; it has nothing to do with this transaction.

The COURT.—The objection is sustained Mr. Moore; it is wholly immaterial now.

The Court thereupon sustained said objection, to which ruling counsel for the defendant duly excepted, and said exception is here specified and designated:

EXCEPTION No. ONE.

The cablegram of January 11, 1916, from the defendant to the plaintiff, and which was referred to in the question, to which the objection was sustained read:

"Statsraad Lindvig,

"Kristiania (Norway).

"STOCK ACCEPTED LETTER TWENTY FIRST DECEMBER SINALOA SAILED TWENTYFOUR HUNDRED THIRTY TONS.

"SMITH." [46—23]

The defendant then offered the following cablegrams received by him from the plaintiff:

"January 19, 1916.

"If you don't wish to overtake full amount two

(Testimony of C. Henry Smith.)

hundred thousand Kroner Pacific, I can dispose of about one hundred thousand here please telegraph."

At the same time the defendant offered a cablegram by him to the plaintiff in reply to the foregoing from Mr. Lindvig. This last-mentioned cablegram read:

"January 19, 1916.

"Cannot give up any of two hundred thousand Kroner stocks writing."

Counsel for the plaintiff thereupon objected to the introduction of the above-mentioned telegram as being immaterial.

The Court sustained said objection, to which ruling the counsel for the defendant duly excepted, and said exception is here designated.

EXCEPTION No. TWO.

The "Regulus" was built on the Oakland Estuary, and I had to make a great many trips over there, and it took up a great deal of my time.

"Q. Were you to be the agent of this 6000 ton steamer when it was completed and turned over?

"A. Yes; that was understood."

The COURT.—Q. Mr. Smith, this vessel was subsequently completed, was it not? A. Yes.

Q. And turned over to the owners? A. Yes.

Q. And accepted by them. A. Yes. [47—24]

Q. I suppose in your statement with the owners you put in this charge that you have got in here for your services? A. Yes.

(Testimony of C. Henry Smith.)

Q. When did you do that?

A. That was done after the vessel was delivered and accepted by the owners.

Q. What date, if you remember?

A. In March or April, 1917.

Q. Was any objection made to your charge at that time? A. Not at that time.

A Western Union night letter, dated San Francisco, March 8, 1917:

Defendant's Exhibit "JJ."

"United States Shipping Board,

"Munsey Building, Washington, D. C.

"In December nineteen fifteen a contract was entered into between undersigned and United Engineering Works for the construction and sale of a steel steamer Regulus stop. Undersigned was acting solely as agent for A. O. Lindvig of Norway who furnished the money for the purchase, the contract having been made in his behalf and confirmed by him stop. The ship is practically completed and is advertised for sailing to South America on Thursday next all cargo having been booked and much of it having arrived in San Francisco ready for shipment stop. Norwegian *Counsel* stands ready to give Norwegian temporary registry stop. Since ship owned by Norwegian and neither enrolled, licensed or registered American am advised by consul that Shipping Act does not apply stop. However, in order that no possible misunderstanding later we hereby explain transaction stop.

(Testimony of C. Henry Smith.)

Simply desire to know that no objection by Board to completion of contract by final payment to builder by undersigned for Lindvig and delivery to Lindvig of formal bill of sale so that vessel can get away stop. Any delay beyond that time means loss of more than two thousand dollars daily stop. May we ask for reply at your earliest convenience.

"C. HENRY SMITH INC."

(The document was marked Defendant's Exhibit "JJ.")

The next exhibit is a telegram from the United States [48—25] Shipping Board to C. Henry Smith, Inc., dated March 10, 1917, and was received here on March 11 in San Francisco.

Defendant's Exhibit "KK."

"C. Henry Smith, Inc.,

"San Francisco, Calif.

"Have you owned any interest in ship Regulus or has any other American person owned any interest in said steamer since December Twenty Two Nineteen Sixteen period was this contract in your name originally, and assigned to A. O. Lindvig and if so when was it assigned, or was it made out originally in your name as agent for A. O. Lindvig.

"UNITED STATES SHIPPING BOARD."

(The document was marked Defendant's Exhibit "KK.")

On March 12, I telegraphed:

(Testimony of C. Henry Smith.)

Defendant's Exhibit "LL."

"March 12, 1917.

"William Denman,

"Chairman United States Shipping Board,

"Munsey Bldg., Washington, D. C.

"Regulus contract made in our name stop. No assignment has ever been made as we have always acted as agent for Lindvig in the matter, hence had nothing to assign stop. Out of $412,500 already paid shipyard Lindvig has paid directly by cable or from his money on hand with us all but $39,400 stop. We financed this $39,400 for him and he is to repay us in stock of a proposed Norwegian corporation which we understand is ultimately to take over the ship stop. We have never received any stock and look simply to Lindvig for repayment in case corporation does not take ship stop. This is only possible American interest we know of stop. All payments of Lindvig but one of $37,500. Made prior to December 1916 Stop Freight rapidly coming into port matter extremely urgent.

"C. HENRY SMITH, INC."

(The telegram was marked Defendant's Exhibit "LL.")

Q. The stock that these friends of yours subscribed for, and the three shares that you got had not been received by you at this time? A. No.

Q. Do you know whether the corporation had been formed at that time?

A. I don't know. [49—26]

Mr. MOORE.—Next is a message to C. Henry Smith, Inc.; from the chairman of the United States Shipping Board:

Defendant's Exhibit "MM."

"1917 Mar. 12 Washington, D. C.

"C. Henry Smith, Inc.,

"San Francisco, Calif.

"It will be necessary for us to have contract made with yard before we can pass on your petition your status involves consideration of legal questions which documents alone can solve. We should also have copies of letters exchanged between yourselves and your Norwegian correspondents to determine character of relationship to them. Our suggestion is that you form a corporation under laws of one of United States in which you or your correspondents own all the stock and operate vessel under American flag. There is nothing now to prevent you making any voyage under our flag which you could make under the Norwegian. It is of course, possible that both these countries may be drawn into hostilities, but this is a matter of course for your own consideration.

"DENMAN, Chairman."

(The document was marked Defendant's Exhibit "MM.")

Next is a telegram from C. Henry Smith, Inc., to William Denman, Chairman, United States Shipping Board, dated March 14, 1917, which reads:

Defendant's Exhibit "NN."

"Contract with yard etc., mailed last Friday stop Mr. Thatcher of the firm Denman & Arnold here now on the way to Washington and will arrive Friday with additional documents to show our status stop If the Board should refuse permit for the transfer of the vessel to Norwegian flag, we shall suggest to the owner that a corporation be formed under one of the Laws of the United States and operate the vessel under the American flag, but we have no authority to do so without his consent.

"C. HENRY SMITH, INC."

(The document was marked Defendant's Exhibit "NN.")

The next is a cablegram from Mr. Smith to Mr. Lindvig reading as follows:

Defendant's Exhibit "OO."

"San Francisco, March 16, 1917.

"Statsraad Lindvig,

"Kristiania (Norway).

"United States Shipping Board is against transfer Regulus Norwegian flag stop They take attitude that [50—27] under paragraph six contract with Union title of vessel remains with builders until delivered stop Vessel will deliver next week delayed account strike stop Eleventh payment made stop Shipping Board indicate they will allow transfer vessel to American corporation all stock of which to be held by you and associates stop Rul-

ing as to whether Norwegian crew may be employed expected in a few days stop In case you do not wish to incorporate vessel I may stand as owner of same stop According to ruling vessel must first be offered for sale now to Shipping Board stop Cannot say at present what they will pay stop Would suggest vessel be operated American flag until such time as she may be transferred or to sell her in few months if so desired stop. At time contract made it was in our name for protection of same.

"SMITH."

(The document was marked Defendant's Exhibit "OO.")

Next is a copy of a letter sent by Mr. Smith:

Defendant's Exhibit "PP."

"March 29, 1917.

"United States Shipping Board,

"Munsey Building, Washington, D. C.

"By night letter sent today, we enter into formal agreement referred to in your wire of today. Stop. Kindly notify Collector of Port as soon as possible that transfer of Regulus to Lindvig and registry under Norwegian flag now proper, so that we can be*ing* loading immediately. Thanking you for your courtesy in this matter,

"C. HENRY SMITH INC."

(The document was marked Defendant's Exhibit "PP.")

Then enclosed in that letter is a night letter:

"March 29, 1917.

"United States Shipping Board,

"Munsey Building, Washington, D. C.

"In consideration of the United States Shipping Board having waived any and all right to purchase, under section Nine of the United States Shipping Act of September seven, nineteen sixteen, the steamer Regulus, now in the port of San Francisco, California, and having also granted and approved the sale and transfer of said steamer to A. O. Iindvig of Christian, Norway, said A. O. Lindvig does hereby agree with said United States Shipping Board that said steamer Regulus will make three consecutive round trip voyages from said San Francisco or from other American port or ports on the Pacific Coast of North America, to port or ports on the West coast of South America, and that the first of said round trip voyage [51—28] will be commenced within twenty-one days from date.

"A. O. LINDVIG.

"By C. HENRY SMITH, INC., Agent."

"We guarantee that the above agreement will be carried out by the Regulus.

"C. HENRY SMITH INC."

Next, the Shipping Board wires, under date of March 29, 1917:

Defendant's Exhibit "QQ."

"C. Henry Smith, Inc.,

"San Francisco, Cal.

"In consideration of owner of Regulus enter-

ing in agreement offered in your telegram of March twenty-eighth Shipping Board waives any right it may have to purchase Regulus under provisions sections nine shipping act prepare agreement and forward same to board. Board looks to your personal assurance of its performance as much as to terms of contract.

"SHIPPING BOARD."

(The document was marked Defendant's Exhibit "QQ.")

Then on the same day I sent two cablegrams to Mr. Lindvig. The first reads:

Defendant's Exhibit "RR."

"San Francisco, 3/29–17.

"Statsraad Lindvig,

"Kristiania (Norway)

"Except favorable decision transfer Regulus Norwegian Flag."

"SMITH."

(The cablegram was marked Defendant's Exhibit "RR.")

And the second cablegram sent evidently later in the day reads:

Defendant's Exhibit "SS."

"March 29, 1917.

"Statsraad Lindvig

"Kristiania (Norway)

"Permit transferring Regulus Norwegian Flag obtained stop Condition on making three more voyages to Chile stop Steamer will be fully com-

pleted Saturday stop Commence loading Monday stop Vessel satisfactory trial trip eleven knots speed attained.

"SMITH."

(The cablegram was marked Defendant's Exhibit "SS.") [52—29]

The following is a letter written by me to Mr. Lindvig on June 1, 1917, which also contains a statement of account between me and Lindvig, dated June 1st, 1917:

"June 1, 1917.

"A. O. Lindvig, Esq.,

"Kristiania, Norway.

"Dear Sir:

"Herewith please find General Account to cover miscellaneous expenses and the transferred balances of S. S. 'Sinaloa,' V-8, and S. S. 'Regulus,' V-I.

"As per your favor of February 28th, 1917, calling our attention to an overchange of $68.69, we have checked over our account and find that this was erroneously charged to you; we therefore are crediting you with this amount.

"We are also enclosing duplicate copy of bill from Haller-Cunningham Electric Co., which amounts to $700.00. This is the voucher that was short on Statement No. 12, of the S. S. 'Sinaloa' account.

"The balance of 30 per cent., account shares of 'Pacific,' is credited to you in this account at the exchange of 27/5/6.

"The dividends on the 'Baja California' stock has been debited to you in this account amounting to $15,698.00.

"The credit balance due you amounting to $24,138.36, was placed to your credit in the First National Bank.

"Trusting that you will find the above mentioned account in order, we beg to remain,

"Yours very truly,

"C. HENRY SMITH." [53—30]

Defendant's Exhibit "VV."

"San Francisco, U. S. A., June 1, 1917.

"A. O. Lindvig,

"Kristiania, Norway.

"In Account with C. HENRY SMITH INC.,

"Steamship Agents and Brokers,

"311 California Street.

	Dr.		Cr.
1917.		1917.	
Mar. 15. Postal Telegraph Co. .....$	47.39	Balance .....$	7,433.24
27. Western Union Tele. a/c Tele. for March ...	100.09	Apr. 10. Alberto Scott a/c Sale of Mnfst.	9.20
29. 60% Dividends on Kupon #6 Certificate #287 to 302, 305 to 316–318 to 323, 325 to 327–348 to 353, 897 to 935–941 to 952 Kupons @ 167.	15,698.00	Wilcox Peck & Hughes a/c Refund	83.05
		Balance "Sinaloa" V-8 a/c.	41,699.41
		Balance "Regulus" V-1 a/c.	53,319.92
Sundries Tele.— Jan.	105.20	Advance a/c Mrs. Petra Smith	200.00

(Testimony of C. Henry Smith.)

		Dr.		Cr.
Apr. 3.	Com'l News Pub.	20.00	"ALTA" Ins. @ 8%	1,200.00
7.	O'Connell & Davis	46.00		
16.	Guide Pub. Co..	35.00	30 a/c 200,000 Krns. @ .27-5/6	16,700.00
27.	Com'l News Pub. Co.	20.00	"ALTA" Ins. .	607.50
May 1.	First Nat. Bank Deposit	75,000.00	To credit items charged twice see "BAJA-CALIFORNIA"	
4.	Metropolitan Press	58.50	State. #27 .	68.69
Apr. 12.	Western Union Tele. Co.	52.47		
	Remuneration a/c Building S. S. "REGULUS"	6,000.00		
	Balance Due A. O. Lindvig.	24,138.36		
		121,321.01		121,321.01

(The account was marked Defendant's Exhibit "VV.") [54—31]

Q. (Mr. MOORE.) I draw your attention to the item there (referring to the account of June 1,1917), remuneration acount building S. S. "Regulus," $6,000.00. A. Yes, sir.

The COURT.—What is the date of that account, Mr. Moore?

Mr. MOORE.—June 1, 1917.

Q. The "Regulus" was actually completed the last of March, or rather, she sailed in the middle of April, did she? A. Yes, sir.

Q. How was it that this account contains items in April and May and that this item for remuneration, account of building of "Regulus" did not appear until you made up your June statement?

(Testimony of C. Henry Smith.)

A. Well, because we did not have the time. We did not have all of the vouchers in.

The "Regulus" made her first outward voyage in April, and all the vouchers were in and the account closed by June 1, 1917. In my statement of accounts with Mr. Lindvig, dated June 1, 1917, I included the following items: "Remuneration account building steamship 'Regulus,' $6,000.00."

Next a letter from Mr. Smith to Mr. Lindvig, dated April 24, 1917, reading:

Defendant's Exhibit "TT."

"A. O. Lindvig, Esq.,

"Kristiania, Norway.

"Dear Sir:

"6000 TONNER–SEPTEMBER DELIVERY:—"

Q. In the meantime you had contracted for another boat from the Union Iron Works, which was afterwards known as the "Romulus"? A. Yes.

[55—32]

Q. And that is what this 6000 delivery refers to?

A. Yes.

Mr. MOORE.—(Reading:)

"In reply to your favor of the 17th Feb, we have sent you the receipt for the $75,562.50 with our letter of the 5th inst.

"As to delivery of this vessel, we are in close touch with the Union Iron Works Co., who intimate that delay is unavoidable owing to the fact that the material is not coming forward as anticipated. The Government is asking all shipbuilders to put all

private work aside for the time being in so far as they can do so, but we believe that this vessel will give delivery some time in October or November. The keel is expected to be laid some time in June or July.

"We took the liberty to telegraph you about the stock in this vessel, as we asked you at the time the contract was made to reserve such shares in the amount of $50,000., and we shall be glad to learn how same is payable. We are now in receipt of a cable from you saying that the stock is not for sale as yet and asking us if we recommend that the ship be sold at the present time and to state eventual price. Inasmuch as it is our understanding that the vessel is being built for South American trade, it would of course be unnecessary to add any extra work on same if you prefer to sell. The 'BAJA CALIFORNIA' and the 'SINALOA' are rather small for Chilean trade and if it is your wish to keep the service you have inaugurated there, it will be necessary to have two steamers of the size of the 'REGULUS': but this of course is a matter for your own consideration.

"The 'REGULUS' we believe will prove a very handy ship for this Coast business. She is a very good carrier and being a very economical ship all around, we believe she should prove an exceedingly profitable investment for the stockholders.

"RATES: On flour, to Valpariso for instance we are now quoting $17.00. We telegraphed you the other day about a surcharge which was proposed by W. R. Grace & Co. to offset extra charges on account

(Testimony of C. Henry Smith.)

of the war. Grace & Co. proposed a surcharge of 50% on the present rates, which we telegraphed you. We, however, accertained that the surcharge was not imposed by Grace & Co. and we therefore hesitated to ask the shippers to pay same. Afterwards a representative of Grace & Co. rang us up and said that they would impose a surcharge of 25%, which they thought was a fair and reasonable increase. We are at the present time taking cargo subject to a surcharge being added to the rate given, and we shall write you how this matter comes out.

"That a surcharge should be added we believe firmly, on account of the higher rates for stevedoring and also on account of oil having increased in price, both here and down South. The oil contract with the Standard Oil Co. covers only three steamers at this *pot,* at 65¢ per barrel. At the present time oil is $1.25 per barrel. We thought it advisable to leave [56—33] the "Governor FORBES" outside this contract, as she burns of course only half of what the 'REGULUS' requires. The oil contract at San Pedro covers all the steamers."

(The letter was marked Defendant's Exhibit "TT.")

Q. That oil contract at San Pedro was with the General Petroleum Company, was it not? A. Yes.

Q. That also was for 65¢ a barrel? A. Yes.

Q. And extended until September, 1918?

A. Yes.

Under date of July 18, 1917, Mr. A. O. Lindvig wrote to me as follows, which letter was received

by me October 15, 1917, and to which I replied November 8, 1917. Under the circumstances existing at that time, it will take some three or four months for a communication to reach its destination:

Plaintiff's Exhibit No. 10.

"Since writing you on the 12th inst. I have received your favors of 1st (two) and 13th June (three), contents of which are noted. I beg to enclose a statement of cables exchanged.

"S. S. 'SINALOA.' I have no news since your cable of 10th.

"S. S. 'BAJA CALIFORNIA,' Referring to the statement of bookings you have sent, it appears that the freight of $46,000—11th southbound voyage, does not correspond to an increase in rates all round of 25%, in face the freight has not been increased even by 10%, compared with the previous voyage, I have talked over this with Captain Rustad, but he was unable to give any explanation. The rate on flour, for instance, is constantly figuring as $15. How am I to explain this?

"S. S. 'GOVERNOR FORBES' I am still without any news re this vessel, since her arrival at Corinto about 27th June.

"Re the matter of supplies, I fully note what you write I have so far no letter from Captain Christiphersen, but it may become necessary to have specified the cases where you could have saved the ship from $1000.—to $1500.—in order that I may [57—34] put this before Captain Christophersen to obtain his explanation. I expect that the ship-chandlers or

the dealers, to whom you have applied, are able to give signed statements, fixing approximately the prices at that time, for the brands and qualities usually bought. I should then submit the same to Captain Christophersen, in order to obtain his counter-statements.

"CONTRACT DUPONT. I await your further news in reply to my cable of 10th inst.

"NEW BUILDING. You have evidently not received my message of 12th inst, when dispatching your cable of 15th?

"I am glad to note that expected delivery in October November means that her position is much better than that of other similar contracts.

"Port Captain or Inspector. This matter is having my attention and I may come back to same later on.

"S. S. 'REGULUS'. The round trip will be taking very long time, and I must hope that the arrangements you are making for her next voyage, will bring a better result. As you are contemplating sending her to Valparaiso also next trip, I take it that you have difficulty in obtaining sufficient cargo for the other ports in Chile?

"Your statement of 1st June. As far as I can see hitherto, there is no voucher concerning the item 'Remuneration a/c Regulus $6000.' Please explain same."

(The document was marked Plaintiff's Exhibit No. 10.)

Under date of August 29, 1917, Mr. Lindvig wrote to me as follows:

"I have now gone through your accounts en-

closed in your letter of June 1st, and find same in order with the exception of following items in the general statement dated June 1st: Re balance from of S/S 'Sinaloa' voyage 8 is transferred with the amount of.....$41,699.41
While the statement says.....40,611.99

Which makes a difference in your favor of $1,087.42

"The items $1200.— & $607.50 for insurance per barkentine 'Alta' have already been credited me, in statement 25 S/S 'Baja California' and statement 1 S/S 'Governor Forbes' respectively. The amounts have therefore been credited you again, as the policies were not renewed. On the other hand I have debited you premium on interest insurance as per my letter of July 14th 1916, $84.90. This policy and the hull policy were, however, prolongated until the ship's arrival at nearest port of loading or discharging and as I learn from your telegram of 22nd inst., that she has arrived Melbourne, I debit you for the [58—35] premiums kr. 608.22 & kr. 41.82—$180.60.—

"I also debit you for remittance June 15th to Mrs. Petra Smith $300.—and telegrams 1916–1917 account 'Alta' $70. The balance of these items makes $2259.42 in your favor, which I hope you will find correct and settle in your next account.

"As formerly told you, there was no voucher rewarding remuneration a/c building SS. 'Regulus' $6000.

"Copy of your statement two for S/S. 'Governor Forbes' has not yet come to hand, but I now hope to receive it one of the first days.

I do not remember whether I sent a voucher for

the $6,000.00 as part of the remuneration building of the steamship "Regulus" with my statement of June 1st, but I sent a voucher afterwards.

On November 8, 1917, I wrote to Mr. Lindvig the following letter. I do not know whether he received it in December or January.

Plaintiff's Exhibit No. 11.

"November 8, 1917.

"Mr. A. O. Lindvig,

"Kristiania, Norway.

"Dear Sir:

"I have just received your letter of July 18th and contents noted.

"S.S. BAJA CALIFORNIA.

"Referring to statement of bookings which you call attention to, would say that these bookings were engaged before the increase of 25% took effect. In the regular trade it is always, of course, necessary to carry forward all contracts, whether there is an increase or not, in the rate of freight. This matter however has been fully explained to you as I believe you telegraphed regarding same.

"SS. GOVERNOR FORBES."

"Regarding the prices for the supplies for this vessel beg to advise that the men that you have now in your office here, can give you these figures, that you ask for, as they were attending to this matter while employed by me. [59—36]

"STATEMENT FIRST OF JUNE.

"Regarding this voucher, we have sent you one as far as I remember and it is for attending to con-

tract, making payments and keeping books for this vessel and also for protecting the contract.

"Yours very truly,

"CHS:MC. C. HENRY SMITH."

(The document was marked Plaintiff's Exhibit 11.)

Under date of May 31, 1917, the plaintiff wrote to the Norwegian Legation at Washington, D. C., as follows:

"Re transfer to Norwegian Flag. I hereby beg to state that in August last year I contracted for a 'New building of about 6000 tons d. w., through my agents at San Francisco, Messrs. C. Henry Smith Inc. The time for delivery according contract is September this year. Builders: Union Iron Works, San Francisco.

"Two Months ago I took over a similar steamer from the Union Iron Works, and she is now running under Norwegian flag in a regular trade, which I started a couple of years ago on the W. C., i. e. loading flour, wood & general merchandise at Frisco and Northern ports for Peru and Chile and returning with nitrate from Antofagasta (for account of the large firm of Dupont), in which trade 4 of my steamers are now engaged, viz.:

'Regulus,'	About	6000	tons	d.w.
'Baja California'	"	2600	"	"
'Sinaloa,'	"	2600	"	"
'Governor Forbes,'	"	2500	"	"

Considering the fact that I intend to maintain the line, which I have started on the W. C. and for which more tonnage is always wanted, and to employ

the above mentioned new building in that trade, I consider it may be feasible to obtain in this case the sanction of the American Authorities in as far as the transfer to Norwegian flag is concerned.—

I believe that this Norwegian line of steamers, the capital of which is partly subscribed by American subjects is very well recognized on the W. C., and I should very much esteem the kind assistance of the Legation in this matter, in order to obtain a favorable result.—

"Any other information, which may be desired, can be had on applying to my agents at San Francisco, Messrs. C. Henry Smith, Ins." [60—37]

On July 14th, 1917, I wrote to Mr. Lindvig a letter, which is as follows:

"ACCOUNTS.

"We beg to hand you herewith disbursement accounts of the S.S. 'Baja California' V–11, S.S. 'Governor Forbes' V–2, and also general account. We are forwarding under separate cover, supporting vouchers, as we think under the conditions that this is the best way to handle those accounts in case of loss.

"S.S. 'Governor Forbes': Owing to the extra high cost of Stevedoring, Food Supplies, and also the repairs and Fuel Oil, the expenses on this ship were very high. We are endeavoring to adjust these charges for the next trip.

"S.S. 'Baja California': Owing to the unsettled labor condition and in order to give the ships good dispatch, we have decided to do our own stevedoring

(Testimony of C. Henry Smith.)

at Puget Sound, and about this matter we are writing you separately.

"General Account: You will note that we have paid the second payment on Hull No. 154, amounting to $75,562.50. We have therefore debited this account and will credit same on receipt of remittance from you.

"Trusting that these accounts will be found in order, we beg to remain,

"Yours very truly,

"C. HENRY SMITH."

On July 16, 1917, I cabled the defendant:

"Have you decided regarding fifty thousand dollar stock I asked you to reserve September last year second new building stop Please let me have the information now as it is of importance to me."

"SMITH."

On July 26, 1917, the defendant cabled me:

"No decision stock second Newbuilding but shall probably keep the boat myself."

As a matter of fact, I never owned any stock, or acquired any stock in the company that took over hull one hundred and fifty-four, if any company ever took her over. She was commandeered by the Government in August, 1917, although I continued to co-operate in her construction, and give such information and [61—38] assistance as was in my power in connection with it. The vessel was commandeered by the United States Shipping Board under their letter, dated August 24, 1917, and I continued to send cablegrams to Mr. Lindvig con-

(Testimony of C. Henry Smith.)

cerning this matter during September, and to correspond with the United States Shipping Board in regard to it. In my account to Mr. Lindvig of October 15, 1917, I included the following items:

"Office remuneration for handling contract Union Iron Works account hull one hundred and fifty-four, attending to payments and etc., ten thousand dollars."

The "Regulus" was contracted in September, 1915, and completed on April 1, 1917.

Q. What was her market value at the time she was completed, the "Regulus," on the first day of April, 1917?

Mr. FRANK.—I object to it as immaterial.

The Court thereupon sustained said objection, to which ruling counsel for defendant duly excepted, and said exception is hereby designated

EXCEPTION No. THREE.

Q. What was the market value of the "Romulus" at the time she was completed?

To this question counsel for plaintiff objected as immaterial.

The Court thereupon sustained said objection to the question, and to this ruling of the Court, the defendant duly excepted; and said exception is here designated

EXCEPTION No. FOUR.

At the time that the "Regulus" was constructed, I received from Mr. A. O. Lindvig a copy of his report to the stockholders of the "Regulus," which gives a statement as to her costs 31 and a statement

(Testimony of C. Henry Smith.)

of her operations for the year 1917—April 1st, to [62—39] December 31st.

It is admitted that this report is an exact copy of the report received by Mr. Bjarne Lindvig, at present the agent of A. O. Lindvig in San Francisco, and which was also received by Mr. Bjarne Lindvig from Mr. A. O. Lindvig.

This report reads:

Defendant's Exhibit No. 50.

"REPORT FOR THE YEAR 1917 (4/1—12/31).

"The company 'Pacific' Limited, was established at a meeting of November 23, 1916, with a capital of Kr. 950,000.00 paid in full, in order to purchase the contract for a 6000 ton steamer built at the Union Iron Works, San Francisco, at a price of $450,000.00, for delivery in December, 1916.

"As the ship was contracted for a single decker, an additional sum had to be paid for furnishing a tween-deck. Wireless telegraph as well as various other extras, were also arranged for. The total cost of the ship was Kr. 1,856,329.41.

"To cover the amount at a 5½% loan of Kr. 600,000.00 was obtained from the Soreke Skibs Hypothenkbank for a mortgage on the ship. The balance was covered by cash credit in Andresens Bank a/s.

"The delivery of the ship was somewhat delayed (partly on account of strikes), and it was not taken over until April, 1917. The builders paid $10,000.00 as a compensation for the late delivery.

"The ship, which was named the 'Regulus,' immediately commenced loading general merchandise in San Francisco, bound for South American ports, as far as Valparaiso. It brought back a full cargo of Nitrate, and has since been running regularly between Puget Sound, San Francisco and South America.

"The voyages have been made without any serious accidents, and the ship has completed 2½ round trips during the three-quarters of a year it has been running.

"C. Henry Smith acted as Agent in San Francisco until October 1, 1917, when the A. O. Lindvig Company established their own office in the city.

"The freight rates southbound increased considerably during the year, especially the last months; for instance, the greight amount for southbound trip in September, amounted to $147,000.00 against $178,000.00 in December, and there is, at the present time, apparently no sign of a decrease in the rates. [63—40]

"For the northbound voyages, the ship has been on a contract for $13.75 per ton on nitrate to San Francisco, with a small additional payment for discharging up north. The contract will expire about May, 1918, and thereafter we can expect a raise on these rates also.

"A Dispute has unfortunately arisen with the former agent, C. Henry Smith, as Mr. Smith withheld about $52,000.00 of the collected freight, to cover various commission charges, which we con-

sider him absolutely not entitled to. The dispute will probably be settled this summer.

"As shown by the following statement, the ship has earned a total freight of Kr. 2,033,983.36, with a net profit of Kr. 1,096,420.32. After deducting interest charges, registration fee, etc., the money at disposal amounts to Kr. 1,012,346.65, which will be disposed of as follows:

Written off on the ship	Kr. 256,329.41
Reserved for boiler & survey funds	100,000.00
Reserved for taxes for 1917	350,000.00
30% dividend to the shareholders	255,000.00
Carried into new account	51,017.24
	Kr. 1,012,346.65

"The 30% dividend was given on January 2d, this year.

"Due to the low exchange on dollars, the money has not been transferred to Norway, but deposited in a San Francisco bank. At the end of the year this deposit amounted to $284,812.83. At the same time we had debts in the Andresens Bank A/S, amounting to Kr. 560,422.31. The mortgage has been reduced with 5% viz: Kr. 30,000.

"The annual stockholders' meeting will take place at my office Sjofartsbygningen, Thursday, April 25, at 1:00 P. M.

"Kristiania, April 11, 1918.

"A. O. LINDVIG."

(Testimony of C. Henry Smith.)

Cost of the S.S. "REGULUS."

Contract price $450,000.00—Kr. 1,630,500.00.

Putting in 'tween-decks, various extras and improvements outside the contract—kr. 204,229.41.....	204,229.41
Commission for contracting the ship, charged by C. Henry Smith $6000..	21,600.00
	1,856,329.41

[64—41]

(The document is here marked Defendant's Exhibit 50.)

The commission charged by me for contracting and supervising the construction of the "Regulus" was 1¼ per cent of her contract price. This is a reasonable charge.

I also charged a commission of 1¼ per cent of the contract price of the "Romulus," known during the time of her construction as Hull 154.

Between December, 1915, and September, 1916, I obtained a number of options for Mr. A. O. Lindvig for the building of 6,000 ton vessels by various yards here, and we finally came to the conclusion of closing this contract for the construction of Hull 154, as the "Romulus" was called during the time of her building. Both the "Romulus" and the "Regulus" were built on the Oakland Estuary, and I went over there a number of times and it occupied a great deal of my time. All of the time that these vessels were building I had to go over there and be in conference with the inspectors and

to watch the specifications, so it took up a great deal of my time.

On September 4, 1916, the plaintiff cabled me:

"26000 September 1917 Union Iron Works sistership ours We confirm purchase 7775000 dollars less 2½ per cent division owners stop Penalty bonus minimum $500 dollars per day clean terms."

On September 5th I cabled the plaintiff through the Trade Bureau at Kristiania:

"Inform Lindvig 6000 September 1917 confirmed by Union Iron Works 775,000 less 2½ per cent."

On September 15, 1916, as representing the plaintiff, I entered into the contract with the Union Iron Works for the construction of Hull 154. [65—42]

AGREEMENT made this 5th day of September, 1916,

BETWEEN

the UNION IRON WORKS COMPANY, a corporation organized and existing under the laws of the State of New Jersey, party of the first part, hereinafter called the "BUILDER"

AND

C. HENRY SMITH, INC., (as representing A. O. LINDVIG of Christiania, Norway), party of the second part, hereinafter called the "OWNER,"

WITNESSETH:

That the parties hereto, each in consideration of the agreements of the other, agree as follows:

FIRST: The Builder agrees to build, equip and deliver to the Owner a single screw cargo vessel, in accordance with the specifications and drawings signed by the parties hereto, which specifications and

drawings are to be taken as part of this contract, as fully as though set forth herein at length; it being understood that whatever may be necessary to complete anything coming within the specifications although not particularly mentioned or although imperfectly or insufficiently described therein, shall be supplied or furnished by the Builder as if the same had been particularly specified; and that all materials are to be the best of their respective kinds and that all workmanship is to be strictly first class and that both materials and workmanship are to be in all respects such as shall be approved by the representative of the Owner.

It is hereby understood and agreed that the steamer herein contracted to be built shall be, as nearly as possible, [66—43] a duplicate of the steamer now under construction at the Alameda Plant of the Builder for C. Henry Smith, Inc., and known as Hull No. 16; and the specifications and drawings referred to above shall be similar to those governing the construction of said Hull No. 16.

SECOND: Should the Owner at any time during the progress of the work request any deviations from said specifications and drawings, the same shall be made, and shall in no way affect or make void the contract; should such deviations involve additional expense, the amount of such additional expense shall be added to the contract price; should the deviations reduce the expense, the difference shall be deducted from the contract price. No new work shall be considered as extra work unless so

agreed in writing by the Builder and the Owner before the commencement thereof.

THIRD: Trial to determine the working of the machinery and the speed of the steamer will be made by and at the expense and risk of the Builder, except as to fuel, which shall be furnished by the Owner. Preliminary or dock trials under steam are to be made to insure that the whole of the machinery, is in proper adjustment and working order; the trial trip and other trials to be made in accordance with the specifications.

FOURTH: The Builder binds itself to make good all defective workmanship or material that may develop within three months after the date of the delivery of the steamer to the Owner, provided, however, that in order to satisfy itself that such defects arise from defective material or workmanship, and not from mishandling, the Builder shall [67—44] be allowed to have a representative on board the steamer who shall be acceptable to the Owner and who shall have free access to all parts of the steamer and its machinery. The Owner will provide said representative with free berth and meals during the entire time he remains on the steamer.

FIFTH: The Builder engages, at its own risk and cost, to deliver the steamer, safe and uninjured, complete as herein stated, at San Francisco, California, into the charge of the persons appointed by the Owner to receive it, on or before the 30th day of September, 1917; but due and reasonable allowance is to be made for any unavoidable delays in the completion of the steamer arising from devia-

tions from the specifications requested in writing by the Owner or from unfavorable weather preventing power speed trials, fires, accidents, strikes, acts of God, or a public enemy, or other cause beyond the control of the Builder. In the event of the steamer not being so delivered within said time, the Builder agrees to pay to the Owner the sum of Five Hundred Dollars ($500.00) as and by way of liquidated damages, for every day beyond the date named for delivery, until the actual delivery of the steamer provided, that the delay shall not have resulted from the causes aforesaid, in which case an extension of time shall be made, such extension to be mutually agreed upon between the Builder and the representatives of the Owner. In case of delivery before the date aforesaid, the Owner will pay a premium of Five Hundred Dollars ($500.00) for each day between the delivery and such date.

SIXTH: The total purchase price to be paid for said steamer, complete as herein agreed, shall be Seven Hundred and Seventy-five Thousand Dollars ($775,000.00) in gold coin [68—45] of the United States of America, and the Owner will make payments to the Builder at its office in the City and County of San Francisco, California, as follows:

10% on execution of this contract
10% when keel laid
10% when framing started
10% when plating started
10% when vessel fully plated
10% when upper deck laid
10% when launched

10% when boiler in ship
10% when dock trial is made
10% on delivery of vessel,

provided that the Owner be shown to its satisfaction, before making any of said payments, except the first, that the Builder has discharged all indebtedness for labor and material employed upon or used in connection with the building and equipment of said steamer and that no *lines* upon said steamer or material in favor of workmen, materialmen or others are in existence. No partial payment, except the first, to be made unless with the approval of the representative of the Owner that the rate of progress in the building of said steamer justifies such partial payment. Payment for all extras, less credits for any deductions, shall be made in cash in like gold coin upon the completion and delivery of the steamer. No partial payments made by the Owner hereunder shall be evidence of performance by the Builder, in whole or in part, and the making of such partial payment shall in no way estop the Owner from thereafter asserting any right or remedy accruing to it because of failure of the Builder to deliver the completed steamer in accordance with the terms hereof.

Should said steamer be completed and ready for delivery, as called for in this contract and the plans and specifications referred to herein, before September 30, 1917, then and in that event any balance of the contract price. [69—46] remaining unpaid at such time shall then become due and payable to-

gether with the final payment of $77,500.00 in the foregoing schedule.

The title to said steamer and all materials acquired to the Builder for use in connection with the building of said steamer shall pass to and vest in the Owner, whenever, and to the extent that, the same shall be paid for as aforesaid. All risk of loss, however, until actually delivered, shall be upon the Builder.

At all times during the construction of the steamer and until the same shall be finally delivered to the Owner, the Builder, shall at its own cost and expense keep the said vessel insured against any damage by fire, water, launching or accident of any kind, in an amount at least equal to the partial payments that shall have been made by the Owner, the loss to the extent of such partial payments to be payable to the Owner and the insurance policies to be delivered to the Owner.

The Builder agrees to hold the Owner free and harmless from any and all liability for any claims for personal injuries or death resulting to any person or employee, other than representatives of the Owner, upon or about or in connection with the construction and trial trips of said steamer.

SEVENTH: The Builder shall, at the completion of the steamer, obtain and deliver to the Owner, the builder's certificate of the steamer, wherein the Owner shall be declared to be the party on whose account the steamer has been built, and shall also obtain and deliver such official papers as may be required by the laws of the United States, and the

Society in which the steamer is registered. [70—47]

EIGHTH: Any and every dispute or difference which shall arise between the Builder and the Owner, respecting their rights and obligations hereunder, shall be settled by arbitration as follows: Either party may by writing, delivered to the other party, state any such dispute or difference and name one arbitrator to act in the settlement of the same; within ten days the other party shall by writing delivered to the party first acting in the matter, name a second arbitrator; the two arbitrators so appointed shall, within ten days after the appointment of the second arbitrator, unless they agree as to the settlement of the dispute or difference, appoint a third arbitrator. The decision of two arbitrators shall be final and binding on both parties. The method of hearing and determining the matter in dispute shall be fixed by the arbitrators or by any two of them. All the expense of said arbitration, including the compensation of the arbitrators, shall be paid as determined by the arbitrators. Notwithstanding the existence of any dispute or difference or the pendency of any arbitration, the steamer, together with the Builder's certificate, shall be delivered to the Owner whenever the Owner shall require possession thereof and gives written notice that it stands ready and willing to pay to the Builder the balance of amount due under this contract.

If, however, such dispute or difference involves any claim by the Builder for additional compensation from the Owner beyond the contract price, the Owner

shall pay such sum to the Builder prior to the delivery of the steamer, or shall secure the Builder therein by good and sufficient surety bond pending the decision of the arbitrators. Neither [71—48] such payments nor the furnishing of such bond in order to obtain possession of the steamer, nor acceptance of the steamer, shall in any respect prejudice the right of the Owner to recover damages for failure of the Builder to deliver said steamer in accordance with the terms hereof.

NINTH: If during the progress of the work the Builder at any time should become insolvent, or any of its property should pass into the hands of a Receiver, or if it should unreasonably suspend work upon said steamer, the Owner shall have the right to enter upon the premises of the Builder and take possession of said steamer, and thereafter cause it to be completed in accordance with the terms hereof, at such place or places as it may elect. If the cost of the completion of said steamer, (including all expenses connected with the taking of possession thereof) plus all advances made to the Builder, shall be less than the contract price, the difference shall be paid to the Builder or its representatives; and, on the other hand, the Builder shall be liable for any additional cost to the Owner by reason of the taking possession of the steamer and the completion of the work. The right in this paragraph given shall be considered cumulative, and shall not in any way limit any other rights or remedies existing in favor of the Owner.

The Building guarantees that none of the devices or anything used in or about the construction and

equipment of said steamer infringes any patents or patent rights and agrees to indemnify and save harmless the Owner from any suits, judgments or claims whatsoever for infringements of any patent or patent right; the Builder agreeing in the [72—49] event of a suit being brought against the Owner, upon notice being given to the Builder that it will have its lawyers defend such suit without cost to the Owner.

IN WITNESS WHEREOF, the parties hereto have hereunto caused their corporation names to be hereunto subscribed and their corporate seals to be affixed by their respective officers thereunto duly authorized. Executed in duplicate.

UNION IRON WORKS COMPANY,
JOHN A. McGREGOR,
President.
ARNOLD A. FOSTER,
Secretary.
C. HENRY SMITH INC.,
C. HENRY SMITH,
As Agents for A. O. Ludwig. [73—50]

I cabled to Mr. Lindvig September 12th as follows:

"Statsraad Lindvig,

"Kristiania, (Norway).

"Governor Forbes' owners refuse to deliver here will accept 340000 at Manila delivery 10 days after approved transfer by Government 10 per cent payment on signing contract suggest vessel be accepted six weeks after transfer instead if you wish to send out officers etc. telegraph stop 30000 received contract 6000 tonner mailed today.

"SMITH."

Under date of September 12, 1916, I wrote the plaintiff as follows:

"6000 tonner—Sept. 1917 delivery—Sistership Hull 16, building Alameda Branch Union Iron works Company.

"According to cables exchanged and your confirmation dated September 4th, reading as follows:

"'6000 September 1917 Union Iron Works Sistership ours. We confirm purchase 775,000 dollars less 2½ per cent. division owners stop Penalty bonus minimum 500 dollars per day clean terms.'

"We have signed contract with the Union Iron Works Company, which we are enclosing herewith for the 6000 tonner which is in every respect sistership of the other 6000 tonner building for your account, price $775,000.00 less 2½ per cent, to the owners, which we have arranged for with the builders.

"We have also made a payment of 10 per cent. receipt for which please find enclosed, and have credited your account with $30,000.00 which we received by cable today."

The "Romulus" was a sistership to the "Regulus," and the "Regulus" during construction was known as Hull 16, but the contract price of the "Regulus" was $450,000.00, while the contract price of the "Romulus" was $775,000.00. The Difference in these contract prices was due to the rising value of materials during the interval.

On September 13, 1916, I cabled Mr. Lindvig as to Hull 154: [74—51]

"New contract 6000 tonner eventually stock desired about $50,000.00."

This was stock desired by me in the "Romulus."

Said cable further contains the following:

"Governor Forbes have telegraphed owners will accept delivery at Manila six weeks after approved transfer 10 per cent escrow money."

Under date of May 10, 1917, the plaintiff wrote me:

"New 6000 Tonner. According to the information received here, through the Legation at Washington, from Solicitor Haight, it is presently difficult to draw any conclusion as to how such tonnage will be treated by the American authorities. I expect it will not make any difference, if I should at this stage declare that I agree to sail her under American flag, or if I should not trouble about this thing at all. According to the information you have given me, I consider that it would in any case not be a difficult matter to arrange the formalities to sail her under American flag. In case you are able to obtain any information, which may be of use to me, please communicate me through the Legation at Washington. I consider it is not impossible that transfer to Norwegian flag may be ultimately be arranged, on the same terms—for instance—as arranged for the 'Regulus'."

In May, 1917, I found that there had been a delay in delivery to the Union Iron Works of the plates necessary for the construction of this vessel, and I took the matter up with the United States Shipping Board, and succeeded in having the shipment of plates expedited. [75—52]

The following document was introduced in evi-

dence, having been produced by plaintiff on request of defendant:

"July 3, 1918.

"UNITED STATES SHIPPING BOARD

TO

"A. O. LINDVIG,

"Kristiania, Norway,

"For disbursements, account building Hull No. 154, known as SS. 'ROMULUS,' Commandeered by the United States Government.

UNION IRON WORKS,	
Payments on building contract.....	$232,500.00
EDWARD S. HOUGH,	
Services rendered, superintending building ship	1,250.00
C. HENRY SMITH,	
Cost of cables regarding building of ship and contract, to and from Kristiania, Norway.....	2,000.00
C. HENRY SMITH,	
Remuneration for procuring and handling contract, Union Iron Works, attending to payments, etc.	10,000.00
C. HENRY SMITH,	
Legal Fees, Postage stamps and incidental expenses in connection with building of ship.....	500.00
NATHAN H. FRANK,	
Services rendered, matter of proposed requisition of said vessel.....	800.00
A. O. LINDVIG,	
Expenses of Inspector Hvoslef.....	1,876.50
	$248,926.50

Direct Examination of Defendant (Continued).

The accounts submitted by me to the plaintiff are absolutely correct.

Mr. MOORE.—Q. Mr. Smith, I would ask you to state what, if anything, you had to do with the purchase for Mr. Lindvig of the "Governor Forbes"?

A. Well, I purchased the steamer and I took the responsibility for inspection and classification that she was as represented, and I delivered the steamer [76—53] to him.

I purchased the "Governor Forbes" for $340,000.00 for Mr. Lindvig, charging him a commission of two per cent, or $6800.00. I not only purchased the steamer, but I took the responsibility for inspection and classification that she was as represented, and she was then at Manila, and I delivered the steamer here in San Francisco, after arranging for the transfer of her flag while she was at the Philippines.

On August 18, 1916, I cabled the plaintiff:

"Statsraad Lindvig,

"Kristiania (Norway)

"Governor Forbes offered firm 350,000 dollars plus 2 per cent. commission prompt delivery now Manila subject approval Government highest class French Veritas will retain class four years. Vessel well kept. Shall we accept. Cable.

"SMITH."

On September 7, 1916, the plaintiff cabled me:

"According your telegram 5/9 presume owners Governor Forbes willing deliver steamer Frisco 350,000 dollars which preferable calculate her avail-

able there end October. Telegraph confirmation.

"LINDVIG."

On September 8, 1916, I cabled the plaintiff:

"Governor Forbes owners accepted price three hundred forty thousand delivery Manila September October subject approval Government transfer escrow money ten per cent. according your telegram we have offered three hundred fifty thousand delivery here believe latter best arrangement as owners cannot now guarantee transfer."

On September 12, 1916, I cabled the plaintiff:

"Governor Forbes owners refuse to deliver here will accept 340,000 at Manila delivery 10 days after approved transfer by Government 10 per cent payment on signing contract suggest vessel be accepted six weeks after transfer instead if you wish to send out officers etc., telegraph stop 30,000 received contract 6000 tonner mailed today."

On September 13, 1916 I cabled to Mr. Lindvig, in which the following occurs: [77—54]

"New Contract 6000 tonner eventually stock desired about 50000 dollars."

This was stock desired by me in the Romulus.

Said cable further contains the following:

"Governor Forbes have telegraphed owners will accept delivery at Manila six weeks after approved transfer 10 per cent escrow money."

On September 15, 1916, I cabled the plaintiff:

"Governor Forbes owners accepted 340,000 dollars payable as follows 10 per cent on closing of contract to be held in escrow balance on delivery not exceeding

six weeks after approval by government stop please remit 30,000 by cable."

On September 15, 1916, the plaintiff cabled me:

"'Governor Forbes' confirmed provided you arrange send crew take steamer to Frisco will send Captain and officers Frisco telegraph when transfer and crew order will then remit 10 pc also telegraph how far work new building advanced."

On September 19, 1916, plaintiff cabled me.

"Ordered Andresens Bank remit thirty thousand dollars account 'Governor Forbes.'" [78—55]

Defendant's Exhibit No. 4–G.

THIS AGREEMENT, Made this 19th day of September, 1916, by and between YNCHAUSTI Y CIA, a copartnership, hereinafter sometimes termed Seller (acting by its agent Welch & Company), party of the first part, and A. O. LINDVIG, of Norway, hereinafter sometimes termed Purchaser, (acting by his agent C. Henry Smith, Incorporated), party of the second part;

WHEREAS, Ynchausti y Cia, a corpartnership, is the sole owner of all and every part of the American Steamer "Governor Forbes" and is desirous of selling said steamer to A. O. Lindvig; and

WHEREAS, said Steamer is a steel vessel burning coal as fuel, with double bottoms suitable for carrying oil as fuel;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH that in consideration of the sum of Ten Dollars ($10.00) paid by the party of the second part to party of the first part, receipt whereof is

hereby acknowledged by party of the first part, and in consideration of the grants, covenants and engagements herein made, the parties hereto hereby do covenant and agree, each to and with the other, as follows, to wit:

1. The Seller agrees, for the consideration of Three Hundred and Forty Thousand Dollars (340,000), gold coin of the United States of America, payable as hereafter stated and upon the terms hereinafter stated, to sell, assign, transfer, convey and deliver unto the Purchaser, his nominee or assigns, by good and indefeasible title, free and clear of all incumbrances, indebtedness and liabilities of every kind and nature, including all liens, whether actual or contingent, and including all claims for average, the said Steamer "Governor Forbes," together with all of her engines, boats, boilers, tackle, apparel, furniture, equipment and appurtenances thereunto appertaining and belonging, on board or stowed on shore in use or held as extras. [79—56]

2. Subject to his right of inspection and refusal after inspection, as hereinafter set forth in paragraph Nine (9) of this agreement, and subject to the terms hereinafter stated, the Purchaser agrees to purchase from the Seller the said Steamer "Governor Forbes," together with all of her engines, boats, boilers, tackle, apparel, furniture, equipment and appurtenances, thereunto appertaining and belonging, on board or stowed on shore, in use or held as extras, for the sum of Three Hundred and Forty Thousand Dollars ($340,000) in gold coin of the United States of America.

3. The Seller guarantees that since July 15, 1914, no German individual, firm or corporation has owned any interest whatsoever in said Steamer.

4. The Seller, on or before October 10, 1916, is to secure the consent necessary from any and all public authorities to transfer and convey the entire interest of every kind and nature in said Steamer to Purchaser absolutely. Said consent, or a certified copy of an order or letter giving said consent, shall be deposited with the Hongkong & Shanghai Banking Corporation at Manila, P. I., immediately after said consent is given. Notification that said consent has been secured and delivered shall be given at the same time by cable message to said C. Henry Smith, Incorporated, at San Francisco.

5. Within five (5) days after said consent is granted, said Seller shall bring said Steamer to the Port of Manila, P. I., and shall keep the same in said port for at least five (5) days after notification of the arrival of said Steamer at said port has been given to C. Henry Smith, Incorporated, at San Francisco. During said five (5) days after said notification said Purchaser by its agents, delegates, or surveyors shall have the right, at any and all times, to make full inspection of the condition of said Steamer.

6. Within five (5) days after said notification of [80—57] arrival to C. Henry Smith, Incorporated, Seller shall deposit with the Hongkong & Shanghai Banking Corporation at Manila, P. I., a Bill of Sale lawfully conveying the entire ownership of said Steamer to Purchaser. Said Bill of Sale shall be held by said Hongkong & Shanghai Banking Corpo-

ration upon the terms and conditions hereinafter stated.

7. Before the time that said Bill of Sale is deposited the Seller, by due meeting of its copartners, shall have the conveyance of said Steamer to Purchaser fully authorized and approved in a manner satisfactory to attorney for Purchaser.

8. Purchaser, within five (5) days from the date hereof, shall deposit with the Bank of Italy, in San Francisco, California, Thirty-four Thousand Dollars ($34,000), the same to be held upon the terms and conditions hereinafter set forth.

9. In the event that the Purchaser, after the said inspection set out in paragraph Five (5), is not satisfied with the condition of said Steamer or with the title of Seller to said Steamer or with the legal effect of the said documents deposited with the Hongkong & Shanghai Banking Corporation by Seller, conveying title to said Steamer to Purchaser, then the Purchaser, within five (5) days after the period set out for the inspection of the Steamer, shall notify by letter, telegram or cable, the said Bank of Italy, the Hongkong & Shanghai Banking Corporation at Manila, P. I., and Welch & Company at San Francisco, that the Purchaser is not satisfied with the condition of said ship or with the title of Seller to said Steamer or with the legal effect of the aforesaid documents, and that Purchaser desires to terminate this agreement. Upon said Notification to said three corporations, this agreement and the effect thereof shall be absolutely terminated. In case Purchaser does not so

notify said three (3) corporations as aforesaid, then or before the forty-second (42nd) day after the consent [81—58] mentioned herein in paragraph four (4) hereof has been given and said notification thereof cabled to said C. Henry Smith, Incorporated, Purchaser shall deposit with the said Bank of Italy three Hundred and Six Thousand Dollars ($306,000) in addition to the Thirty-four Thousand Dollars ($34,000) previously deposited. Said money shall be held for the purpose hereafter set forth.

10. Upon the receipt of said Three Hundred and Forty Thousand Dollars (340,000) in all from the Purchaser as aforesaid, said Bank of Italy shall, by cable, notify said Hongkong & Shanghai Banking Corporation at Manila, P. I., that said money has been received and that said Hongkong & Shanghai Banking Corporation shall deliver to the order of Purchaser possession of said Bill of Sale and the other documents deposited with it as aforesaid. Said Hongkong & Shanghai Banking Corporation shall within five (5) days after said notification of said deposit, hold said Bill of Sale and said other documents to the order of Purchaser, and the Seller shall, at the same time as said delivery of said documents is made, tender delivery of said Steamer to the order of Purchaser at Manila, P. I. Upon notification by cable from said Hongkong & Shanghai Banking Corporation that said Bill of Sale and other documents are held to the order of Purchaser and that delivery of said Steamer has been tendered to Purchaser, said

Bank of Italy shall at once hold said Three Hundred and Forty Thousand ($340,000) Dollars to the order of Seller. At the time said Steamer is delivered to Purchaser as aforesaid, it shall be in fully as good condition as it now is, reasonable wear and tear being excepted.

11. All moneys deposited in said Bank of Italy by Purchaser shall be held by said Bank to the order of Purchaser and may be withdrawn by Purchaser:

(a) Immediately after this agreement is terminated, as provided in paragraph nine (9) hereof. [82—59]

(b) On or after December 10, 1916, if said Bank of Italy has not by that time received notice from said Hongkong & Shanghai Banking Corporation of the tender of said Steamer to Purchaser as hereinbefore stated.

All documents deposited in said Hongkong & Shanghai Banking Corporation by Seller shall be held by said Bank to the order of Seller and may be withdrawn by Seller:

(a) Immediately after this agreement is terminated as provided in paragraph nine (9) hereof.

(b) On and after December 10, 1916, if said Hongkong & Shanghai Banking Corporation has not by that time received notice from said Bank of Italy of the deposit in said latter Bank of Three Hundred and Forty Thousand Dollars ($340,000) in all by Seller, as hereinbefore provided.

12. All documents or papers deposited with Hongkong & Shanghai Banking Corporation by

Seller in accordance with this agreement shall after their deposit, be open to inspection at all times by the Purchaser, his agent or attorneys.

13. Any action required to be taken herein by Purchaser may be taken by said C. Henry Smith, Incorporated, acting for Purchaser with equal effect; any action required to be taken herein by seller may be taken by said Welch & Company acting for Seller with equal effect.

14. Time is of the essence of this contract, and if either party fails to comply with each of the terms of this agreement within the times set our for the performance of the conditions thereof, then the other party may at its option declare this agreement broken and refuse to perform any further obligations on its part. Notification shall be made by the party exercising said option to the other party, and also to said C. Henry Smith, Incorporated, said Welch & Company, said Bank of Italy, and said [83—60] Hongkong & Shanghai Banking Corporation. After said notification all deposits of moneys or documents, made as provided in this agreement, shall be at once returned to the party giving such notification by the bank or other corporation holding said deposits. This paragraph shall not affect any right to damages for breach of contract by one party to this agreement against the other party.

15. This agreement shall be binding upon the heirs, administrators, executors, assigns and successors of the parties hereto.

(Testimony of C. Henry Smith.)

IN WITNESS WHEREOF the parties hereto, by their respective agents, have set their hands the day and year first above written.

_____,

By WELCH & COMPANY,

Its Agents.

By _____,

President.

Attest: _____,

Secretary.

_____,

By C. HENRY SMITH, INCORPORATED,

His Agent.

By _____,

President.

Attest: _____,

Secretary. [84—61]

(The document was marked Defendant's Exhibit 4–G.)

After the purchase there was a good deal of complication in regard to the transfer of the vessel. The lower court in the Philippines refused to transfer the vessel, and we had to appeal the case to the Supreme Court, and the Supreme Court held that the transfer should be made. Then we arranged for the taking of the delivery of the vessel and the payment for the vessel.

Q. What was the value of that vessel, the market value here in San Francisco, at the time of her delivery here in 1917?

The COURT.—Your claimed compensation is on

(Testimony of C. Henry Smith.)

the basis of a certain percentage, two per cent, is it?

Mr. MOORE.—Yes, sir.

The COURT.—On her purchase?

The WITNESS.—Yes, sir.

To this question counsel for the plaintiff objected as immaterial. The Court sustained said objection to the question, and to the ruling of the Court sustaining said objection, the defendant then and there duly excepted, and hereby designates said exception as

EXCEPTION No. FIVE.

Q. Now, your charge in respect to the "Sinaloa" salvage item is $3,165.27, and I want to take that item up next.

Mr. FRANK.—We will have to object initially to anything at all with reference to salving the "Sinaloa" because the "Sinaloa" was one of the vessels in the employ of the steamship line, and he being in that employ at that time, it was a part of his duty as general agent to take care of the vessels. [85—62]

The COURT.—I will tell you what I think would be the better way. I think you had best make to the Court a brief statement of the character of the evidence you propose to offer in support of this item, and the Court will then pass upon that as a statement—I mean pass upon the question then as to whether or no under that statement it is within or outside the lines of his contract.

Mr. MOORE.—I propose to show that on June

(Testimony of C. Henry Smith.)

14, 1917, the "Sinaloa" ran aground in a fog a little south of Cape Blanco, and that on June 15th Mr. Smith received a wire from the captain of the vessel to that effect; that on the same day he, Mr. Smith started a tug from Coos Bay, which was expected to arrive at the place where the vessel was in four or five hours; that he was further wired by the captain that he must have assistance the vessel was leaking badly, there was water in the afterhold, and that Mr. Smith left that same night for Cape Blanco with Captain Curtis of the Marine Underwriters, going overland to Eureka, and from there by boat north to the vessel at Cape Blanco; that before arriving he wired the captain he was sending men and cables and equipment; and that on July 11th, a barge was installed alongside the vessel and all of the gear was received; that he facilitated the saving of the ship; that he had a great deal of correspondence with the plaintiff in regard to her, and what should be done with respect to her, and in the adjustment upon her, and a great deal of correspondence with the people doing the salvaging operation; that there was a controversy as to whether the vessel should be towed to Portland or San Francisco; that the defendant insisted she be towed to San Francisco; and when there he submitted her to bids of the different ship building companies; that there were three bids given [86—63] for her repairs, the lowest being by the United Iron Works for $135,000.00 and the next lowest being for $200,000.00; and that the United

(Testimony of C. Henry Smith.)

Iron Works did not want to do the job because they were immediately afterward commandeered by the Government; and that Mr. Smith then took up the matter with the Shipping Board, and obtained a permit from the Shipping Board providing for the repairing of the vessel by the United Iron Works.

Mr. FRANK.—I have nothing to say excepting that it is incompetent and immaterial, the statement he has made.

The defendant then offered to introduce certain cablegrams, stating:

"It is for the purpose of showing services rendered by Mr. Smith in connection with the salvage of the 'Sinaloa' amounting to some $2,000, which represents 5% of the sum total of $60,000 that was paid out. I want to state the purpose. That was advanced by Mr. Smith, and showing the communications between himself and Mr. Lindvig during the course of that time and the requests that were made upon him by Mr. Lindvig, in the matter and the appointments by Mr. Smith and the revocation of the appointment by Mr. Lindvig as to the appointments made by Smith."

To all of which the plaintiff objected on the ground that it was incompetent and immaterial.

(To the WITNESS.)

Mr. MOORE.—You have examined these cablegrams? A. Yes, sir.

Q. Now, don't answer this unless the Court tells you you may. I will ask you to state whether the fol-

(Testimony of C. Henry Smith.)

lowing cablegrams were exchanged by you, between you and Mr. Lindvig. You cabling to him upon the subject of the "Sinaloa" and her then condition and what you were to do about it, and what he wanted you to do. Did you cable to him on June 16th, 1917, as [87—64] follows:

"Sinaloa aground near Cape Blanco in fog this morning have sent tug for assistance."

And again on June 17th, 1916.

"Alta sailed for Melbourne stop Sinaloa position very difficult stop broadside to the beach stop leaking stop ten feet water aft hold."

And did he cable you on June 19th, 1916?

"Wilcox Peck Hughes attending average Sinaloa."

And again on June 20th:

"Urgent Wilcox cable chances floating Sinaloa slight stop everything possible must be done to save her."

And thereafter on June 20th, 1916, did you cable him; and then he cabled you on June 22d?

"Kindly cable amount Sinaloa insured stop Smith now at ship stop after hold flooded no water forward stop discharging cargo onto barges."

"Steamer Sinaloa insured as follows seven hundred thousand kroners hull three hundred thousand hull interest hundred thousand freight interest stop understand now prospects save ship stop condemnation must be avoided if by any means possible."

And you cabled him June 21st:

(Testimony of C. Henry Smith.)

"Sinaloa appointed Johnson and Higgins adjusters stop they are agents for Skuld."

And he cabled you on June 23d?

"Steamer Sinaloa you must adhere to my instructions appoint Wilcox Peck & Hughes who are agents main hull underwriters stop should otherwise have had no objection employ Johnson Higgins."

You cabled him on June 23d:

"Believe Sinaloa may be floated according to experts stop assembling fuel equipment to go north stop vessel in a rather protected position during summer."

You cabled him on June 29th:

"Please insure ocean going barge sent to Sinaloa value fifteen thousand dollars." [88—65]

And he cabled you on July 2d:

"Covered hull insurance barge fifteen thousand dollars two per cent voyage Frisco to steamer Sinaloa therefrom to Puget Sound or Frisco."

You cabled him on June 30th:

"Please place insurance salvage equipments sent aboard Phoenix and ocean going barge to Sinaloa valued at twenty-five thousand dollars."

He cabled you on July 3d:

"Steamer Sinaloa referring your cables 29/6 and 30/6 we have insured two barges and equipment in all 40,000 dollars value is this correct."

We will take a ruling on those cables.

Mr. FRANK.—We admit, of course, that those cables passed between them. They may be set out

(Testimony of C. Henry Smith.)

in the record so that the record may be perfect, and we will make our objection on the grounds stated.

The COURT.—Under the construction I put on this contract that evidence is wholly immaterial.

The defendant duly excepted to the ruling of the Court sustaining said objection, and said exception is here designated.

EXCEPTION No. SIX.

The WITNESS.—(Continuing.) I disbursed $63,305.54 in the salvaging of the "Sinaloa."

The COURT.—You constantly had moneys of the plaintiff here coming in, I suppose?

A. Yes, sir, I did, but we had large disbursements, too.

Mr. MOORE.—Q. You had moneys on hand belonging to Lindvig at that time, did you?

A. Yes, sir, I had.

Q. And also what disbursements did you have, or what calls were made for that money?

A. There were constant disbursements. We had to pay the expenses at the Southern [89—66] ports and the disbursements for the steamers all of the time, and I was responsible for these disbursements while I was agent.

Q. I will ask you to state whether or not you arranged where the vessel should be brought to when she was taken away, or when she was floated.

Plaintiff's counsel objected to this question as immaterial and the Court thereupon sustained said

(Testimony of C. Henry Smith.)

objection, to which ruling counsel for defendant duly excepted, and said exception is here designated.

EXCEPTION No. SEVEN.

I made application to the United States Shipping Board at Washington in regard to a permit being issued for the repair of the vessel by one of the ship building yards here in San Francisco Bay.

For the return voyages of these vessels from South America, I as agent for plaintiff entered into yearly contracts for the carriage by these vessels of nitrate with the Dupont de Nemours. The last of these contracts entered into by me was dated July 10, 1917.

Q. Now, Mr. Smith, Mr. Lindvig had a contract, did he not, preceding this contract for the carriage of nitrates with the Dupont, which expired on June 1? A. Yes.

Q. You had no other contract with the Dupont at that time for the carriage of nitrate over these lines?

The COURT.—Yourself individually?

A. No.

Mr. FRANK.—Or otherwise?

A. No. This contract covered the carrying of forty thousand tons during the year June 1, 1917, to June 1, 1918. Before entering into this contract the defendant cabled me to first obtain the consent of the British Admiralty and meantime to fix for only one voyage, but I considered such a

(Testimony of C. Henry Smith.)

course impracticable and unnecessary, [90—67] and was so advised by W. A. Simonton, the Traffic Manager for the DuPont de Nemours Company. He said it would be a long time before the matter could be taken up by our Government and the consent of the British Admiralty secured, but that if any trouble should be made, there would be no difficulty about keeping the vessel on the run, inasmuch as they were carrying nitrate, to the Dupont de Nemours Company, at San Francisco and at Tacoma, which [91—68] nitrate was being used in the manufacture of munitions of war.

I knew that the Government was advised of previous contract with the DuPont de Nemours Company, and favored a continuance of this business, and it was on the strength of the "Regulus" engaging in the carrying of this nitrate, that I was able to get her transferred to the Norwegian flag in April, 1917.

On October 31, 1917, I wrote the following letter to Captain P. Hvoslef:

Defendant's Exhibit No. 4–Z.

October 31, 1917.

"Captain P. Hvoslef, Representing, A. O. Lindvig,
"280 Battery St.,
"San Francisco, Calif.

"Dear Sir:—

"NITRATE CONTRACT.

"I hereby beg to inform you that I have charged commission on the total amount of Nitrate to be lifted under this contract, less what has already been car-

ried according to statements in the hands of Mr. A. O. Lindvig, Kristiania, Norway, or on the way, of which copies at your disposal. This charge will have to stand, inasmuch as you have not acknowledged that you intended to carry out the contract, and therefore have placed me in an embarrassing position towards the Dupont Company.

"I hereby beg to give notice that I require sixty (60) days in order to make arrangements to take over any portion of Nitrate which you are unable to lift or which you wish to be relieved of, subject to, of course, contingencies beyond control.

"Yours very truly."

(This letter was marked Defendant's Exhibit 4–Z.)

On October 6, 1917, I wrote the following letter to Mr. A. O. Lindvig:

Defendant's Exhibit No. 5–A.

"Oct. 6, 1917.

"Mr. A. O. Lindvig,

"Kristiania, Norway.

"Dear Sir:—

"DUPONT POWDER COMPANY. [92—69]

"Regarding your telegram to Mr. Hvoslef, that I acted without any instructions in arranging same, I must call your attention to my telegram of July 8th reading as follows:—

> " 'Dupont will not consider three months contract stop insist on yearly contract stop otherwise business off and will employ their own boats stop offer thirteen dollars seventy five cents stop dollars 13.75 stop will assist toward our Government and England if necessary.'

"Also your reply thereto of July 10th as follows:

> " 'Can only fix for one voyage at the time unless Dupont or American Government can get British Admiraltys approval for a longer period stop if this obtainable expect get our Government agree telegraph.'

"Inasmuch as I obtained a promise from the Dupont Company to assist toward the American Government, I could not get any other meaning out of the cables exchanged with you, that it would be satisfactory to close the contract. I also must call your attention to your letter of July 12th, in which you say that you are sorry that you cannot give clean authority to close the contract, meaning of course, without any strings to it. I cannot understand it any other way.

"All contracts will always be subject to the laws and regulations of the Norweigian Government at all times and the agreement is not binding upon you if the Government says 'No.' Otherwise I am personally responsible for this agreement made with Dupont Powder Company, and I shall carry it out myself, if you do not. Inasmuch as many cables are multilated when they arrive here from yours and also because the mail takes such a long time, it was impossible for me to go into further details.

"OPERATION OF SHIPS.

"I have now transferred this to your office, which I have been informed is now established here. Mr. Hvoslef called on me yesterday and I understand he arrived from Norway a couple of days ago, and I

transferred to him the Oil contract I made in September, 1915, for the SS. SINALOA AND BAJA-CALIFORNIA, and any other steamers owned or operated by me. This contract is on a basis of 65¢ per barrel. In view of the market of today, $1.30 and $1.40, it is a good contract. I also transferred the contract to him which I made with the Standard Oil Company about four(4) years ago and which expires the end of this year. You will understand that I have had no request from you to close or to make any contracts for fuel oil in your behalf. I enclose a copy of the contract for your perusal.

"REGULUS STOCK.

"This stock arrived here last month and I delivered [93—70] same to the United Engineering people. My lawyer told me that I had a chance to win the case against the United under the option; but that being an American citizen it might be a question whether I was a Norwegian interest, which is set forth in the option. He told me furthermore that you, yourself, being managing owner of the REGULUS have exercised the option, but I decided that if anyone was entitled to exercise such option, it was, of course, me and if I could not do it, it was only just that the United should have the stock. Therefore, I did not take the matter up with you.

"ACCOUNTS.

"I have paid the Union Iron Works $135,000.00 on account of the repairs of the SINALOA which will amount to, with extras and bonus, to about $145,000.00. As soon as I receive the bills from the Union Iron Works, I shall draw the remainder of the

credit, which you arranged with the First National Bank to pay. The salvage money which I have paid out amounts to about $60,000.00. I may say that it was very fortunate for the steamer that we obtained permission from the Government to have the repairs made, as at that time the Union Iron Works was taken over by the United States Government and the Union people claimed that they were not obligated to finish the contract. I have deposited what is due you as per GOVERNOR FORBES AND BAJA CALIFORNIA. Statements in the First National Bank to your credit and as soon as we have the accounts checked up for the SINALOA which sailed from Seattle on September 26th, of which you have been notified and also the General Statement and Salvage Statement.

"Yours very truly."

(The letter was marked Defendant's Exhibit 5–A.)

On November 21, 1917, I wrote the following letter to Mr. Lindvig:

Defendant's Exhibit No. 5–D.

"A. O. Lindvig, Esq., per B. Lindvig, Agent,
"280 Battery St.,
"San Francisco, Calif.

"Dear Sir:—

"Re: Commission for Procuring Dupont Contract.

"With regard to the item of October 12, $25,517.80 balance of commission for the contract to carry 40,000 tons of nitrate for the Dupont Powder Company, my understanding is that you are to carry the balance of the nitrate under the terms of the con-

(Testimony of C. Henry Smith.)

tract. [94—71] Apparently you hesitated at first under the impression that the contract was contrary to Norwegian law. On examination, it appears that it does not purport to charter any ship and could be performed in any vessels we might present and hence offends no Norwegian law. Your ratification by performing in part and by Mr. Hvoslef's statements we take to indicate your desire to perform the contract. This point of view is confirmed by advices from the Dupont Company.

"Very faithfully yours."

(The letter was marked Defendant's Exhibit 5–D.)

Mr. MOORE.—Q. Now, Mr. Smith, at the time that you made that contract, did you know and appreciate and believe that you would be responsible for the carrying out of it in the event Mr. Lindvig did not choose to do so?

Mr. FRANK.—I object to that as immaterial and incompetent.

The COURT.—I think I will let him answer that, I would like to know how he expected to carry it out.

Mr. FRANK.—We take an exception.

A. Yes, I did.

Mr. MOORE.—Q. Now, to answer the Court's question, how did you expect to carry it out if it was up to you to do so, in the event Mr. Lindvig did not want to?

A. I expected to get other vessels.

The COURT.—Q. Where would you get them, under the conditions prevailing at that time?

(Testimony of C. Henry Smith.)

A. They were building a number of wooden ships on the Coast, and I owned some ships myself.

Q. What were they?

A. They were sailing ships, and I was negotiating for auxiliary wooden ships at the time for the purpose of carrying out this contract.

Q. For the purpose of carrying out this contract?

A. Yes, in case Lindvig did not. [95—72]

Q. You expected all the time that Mr. Lindvig would go on and carry out the contract, didn't you, that is, that his ships would be used in that trade?

A. Yes.

Mr. MOORE.—Q. I will ask you to state whether or not when you found out that Mr. Lindvig was objecting to your having made the contract you made any effort or tried to buy these ships from him?

A. Yes.

On July 11th, 1917, I wrote the following letter to W. A. Simonton:

Defendant's Exhibit No. 5–F.

"July 11, 1917.

"Mr. W. A. Simonton,

"Traffic Mgr.,

"E. I. Dupont de Nemours & Co.

"Palace Hotel, G.D. San Francisco Cal.

"Dear Mr. Simonton:

"CONTRACT *NEST* YEAR

"I am now in receipt of a cable from the owners through the Norwegian Delegation at Washington, stating that the vessels cannot be fixed for more than

one voyage at a time. It develops that influence has been brought to bear with the object of having the vessels ready for the Atlantic service if necessary.

"In view of my having signed the agreement with you for the 40,000 tons to be lifted during the next year, it would be of importance that you take the matter up with our Government, so as to avoid any misunderstanding.

"Yours very truly."

(The document was marked Defendant's Exhibit 5-F.)

On July 9, 1917, I wrote the following letter to W. A. Simonton:

"July 9, 1917.

"Mr. W. A. Simonton,
"Traffic Manager,
"E. I. Dupont de Nemours & Co.
"Palace Hotel, San Francisco, Calif.

"Dear Mr. Simonton:

"I am sending you herewith contract and nine copies. I have not signed the contract as yet, as I wish you would look it over first. The changes that I have made [96—73] as follows, cover, Average per month 3400 tons, and 8000 tons instead of 5000 tons, discharge at Dupont 500 instead of 350, and delivery of Nitrate as fast as ship may receive at place of loading. Notice of distribution of cargo, twenty days instead of ten day. I hope you can see us through on this latter point, as with the embargo coming on it will be more difficult of course to handle south bound freight.

"Outturn weight to govern instead of bill of lading weight. Embargo clause inserted as agreed.

"I have not had a confirmation from the owners in Norway, but if you will assist me in getting an early delivery of the vessel now building at Union Iron Works Co., I think we shall be able to carry out the contract. Contract time from June 1st, 1917 to June 1st, 1918.

"Yours very truly." [97—74]

Defendant's Exhibit No. 4–S.

AGREEMENT between C. Henry Smith of San Francisco, Calif., (the carrier) and the E. I. Dupont de Nemours & Co. of Wilmington, Del. (the shipper), for the freighting of nitrate of soda in bags, by steamer, from ports in the Nitrate Range in the Republic of Chile, between Pisagua and Taltal, both inclusive, and San Francisco, Cal., and/or Dupont, Washington, and/or Powder Point, British Columbia.

1. The Shipper agrees to ship and the Carrier to provide tonnage for the Shipper's nitrate requirements for San Francisco, and/or Dupont, (Tacoma), and/or Powder Point, British Columbia, for the year June 1st, 1917—June 1st, 1918, amounting to Forty Thousand (40,000) tons, 10% more or less, in connection with the Norwegian steamers "Baja California," "Sinaloa," "Regulus," and the steamer now building at the Union Iron Works Co., to be completed September, 1917, delivery expected November 1917, and/or other steamers and motor vessels,

(tons of 2240 pounds always understood). Freight payable on outturn weights. Cost of weighing at the expense of Shipper.

2. The Carrier to supply tonnage at intervals of about Forty-five days, and agrees to give the Shipper at least Thirty (30) days notice on each occasion, of the name of the boat and approximate loading date. If after naming steamer and loading date, steamer is delayed for twenty days or more, the carrier is to reimburse the Shipper for any loss incurred by the shipper account of extra storage and/or insurance, occasioned by such delay, or Carrier may substitute another steamer.
3. When it is foreseen that the succeeding boat is likely to be delayed, the Carrier may call for Two monthly lots, or about together Eight Thousand (8,000) tons or 10% more or less, Carrier's option by giving the Shipper at least Thirty (30) days notice. In such cases the Shipper has the right then either to supply the Eight Thousand (8000) tons, or to release the Carrier from the obligation to provide tonnage in the time of respective vacancy in departure. Such additional shipment of Eight Thousand (8000) tons, if effected, would thereby anticipate the next regular shipment to the same extent.
4. The Shipper, direct or through his agents, is entitled to ship from any one safe nitrate port within the Taltal-Pisagua Range, both inclusive, two places between Iquique and Pisagua to

count as one port,—the port named above or two places between Taltal and Pisagua, but in loading this cargo ships are not to be sent out of geographical order, that is, they are to load first at the most Southerly port, and thence in geographical order. Cargo to be delivered alongside ship as customary for nitrate steamers, and loaded as fast as nitrate may be received by the ship.

5. Destination: San Francisco, Cal.

Upon notice to Carrier not less than Twenty (20) days before expected arrival of ship, at San Francisco, the Shipper is privileged to declare for Dupont (Tacoma) Wash. (or Powder Point), British Columbia, for a quantity of not less than Five Hundred (500) tons. At Dupont, or Powder Point, the consignee is to provide a safe berth, free of wharfage and without delay. Delivery to be taken according to the custom of the port for nitrate steamers.

6. FREIGHT RATE to San Francisco, Thirteen and 75/100 ($13.75) Dollars per ton of 2240 pounds, gross weight. The use of Dupont, (Tacoma) or Powder Point, B. C., to incur an extra freight of fifty (50¢) cents per ton on the quantity delivered there. Discharge not less than Five Hundred (500) tons at Tacoma, per day, and at San Francisco and Powder Point, as fast as Nitrate may be delivered from [98—75] ship. One-third of amount of freight payable on shipment of cargo.

7. Shipper responsible for Demurrage at the rate of Seven Hundred Fifty ($750.00) Dollars for

steamers "Baja California," "Sinaloa" and Fifteen Hundred ($1,500.00) for "Regulus" and new building, per day, for defaults in delivery at loading port or delays in discharge.

8. The Shipper is to have the privilege of shipping nitrate of soda by any steamer now under time charter to them or controlled by them, during the life of this contract, and such quantity as may be shipped on such steamer or steamers, thereby anticipates their next monthly shipments to the extent of that amount, figuring the monthly shipments to be 3,400 tons per month, if carrier fails to furnish steamer within specified forty-five days. However, the shipper is to give the carrier at least Sixty (60) days notice of their intention to use any of their time chartered or controlled steamers. Such shipments via any of Shipper's boats as named above, would be entirely for Shipper's account.
9. Other general conditions of current du Pont nitrate charter party to prevail. Adjusters in case of General Average to be appointed by Carriers for hull.
10. This engagement commences on the 1st day of June, 1917, and continues until the 1st day of June, 1918, inclusive.
11. Both parties may delegate to their respective Valparaiso Agents, the working out of shipping details and likewise to San Francisco, and/or Dupont, and/or Powder Point, the matter of discharging details.

12. The Ship has liberty to call at any ports, in any order to sail without Pilots, and to tow and assist vessels in distress, and to deviate for the purpose of saving life or property.

13. Should the Government place an embargo on foodstuffs, etc., which may prevent the Carrier to obtain southbound cargo, this contract will automatically cancel.

The Act of God, perils of the sea, fire, barratry of the Master and Crew, enemies, pirates, and thieves, arrests and restraints of princes, rulers, and people, collisions, stranding, and other accidents of navigation excepted, even when occasioned by negligence, default or error in judgment of the Pilot, Master, Mariners, or other Servants of the Shipowners.

Ship not answerable for losses through explosion, bursting of boilers, breakage of shafts, or any latent defect in the machinery or hull, not resulting from want of due diligence by the Owners of the Ship, or any of them, or by the Ship's Husband or Manager.

SIGNED IN TEN (10) COPIES, FOR A SINGLE PURPOSE.

Date—Jul. 10, 1917.

(Signed) C. HENRY SMITH.

E. I. DUPONT DE NEMOURS & CO.

By (Sgd.) W. A. SIMONTON. [99—76]

(This document was marked Defendant's Exhibit 4–S.)

The item of $2,049.65 is five per cent on the inward freight of the "Governor Forbes" on her inward voyage arriving at San Francisco on October 3d, or

(Testimony of C. Henry Smith.)

4th in 1917. She left Guayaquil in September 1917, with a cargo of cocoa.

Mr. MOORE.—Passing to another matter, Mr. Smith, which might be considered in this connection, you have retained, have you not, a suspense item of $5,000 to cover bookings made in your office and engagements prior to October 1 on outward bound freight? A. Yes.

Q. Just state what the fact was in that connection because it bears on the same matter?

A. Well, they took away all the records of freight booked which we had made, and when we wanted to look the matter up we had no book in the office and we asked them to return them and they said then they had not booked no cargo at all, and the correspondence would show they admitted taking the books and they then returned some of them.

Q. Is your claim in that connection that before October 1 the employees of your office who were going to go over to Mr. Lindvig's office were booking freight while still in your employ? A. Yes.

Q. For how long back had that condition of affairs been going on where they were booking freight in your office while still in your employ which was not to be loaded on board of vessels until after October 1? A. That was three or four months back.

On October 27, 1917, Mr. B. Lindvig, General Agent wrote me a letter, which reads in part as follows: [100—77]

Defendant's Exhibit No. 4–Q.

"We enclose herewith copies of bookings covering cargo contracted prior to October 1st, and will state further that our engagements here are open for inspection.

Our Mr. Silva states that he spoke to you about August 25th regarding bookings for October/November and you advised him that it was all right to go ahead and contract freight, that he could take the bookings over on the 1st of October, and the transfer was made accordingly.

"We cannot grant that you have a right to a credit on cargo that has not even been shipped and that will go forward well over the time that the change took place.

"Mr. Silva's intentions were not to put on a man in our office while he was still in your employ, but to resign and come over himself on September 1st. This he would have done had there been any question regarding business for shipments beyond October 1."

(The letter was marked Defendant's Exhibit 4–Q.)

I have nothing to do with the operation of the vessels, their outfitting, or their tackle, furniture, or repairs, or with the appointment of their matters, or the employment of their crews, or anything to do with the furnishings of provisions and stores, or with the preservation of proper certificates, or surveys, or their insurance, or management.

Testimony of John A. Bishop, for the Defendant.

JOHN A. BISHOP, a witness called on behalf of the defendant, testified as follows:

Direct Examination.

I am an average adjuster, connected with Johnson & Higgins, and have been engaged in that business for twenty-eight years, my business having been entirely that of an adjuster of averages and insurance.

Q. Your business has been entirely that of an adjuster of averages and insurance? A. Yes.

Q. You have no connection whatsoever with any steamship lines, and never had had?

A. No. [101—78]

Q. And know nothing about their business at all?

A. Except in a general way, as taught by experience in our own business.

Q. Simply as a matter of the adjustment of general averages between the insurance companies and the ship owners, where insurance is in question?

A. No; it is not confined to the question of insurance companies, Mr. Frank. * * *

A. The question of general average is not a matter between the ship owner and the insurance company, but a matter between the ship and cargo owner.

Q. Between the ship, cargo and freight?

A. Between the ship, cargo and freight.

Q. In other words, all the interests that are at risk at the time of an injury or damage to the vessel? A. That is correct.

(Testimony of John A. Bishop.)

Q. It is also carried into the insurance and depends on the insurance companies assuming the risk of the ship owner or whatever is insured?

A. It does not necessarily have any connection with insurance, Mr. Frank. The vessel may be insured, or the cargo may not be insured, and the question of general average arises irrespective of the insurance.

Q. It does not have any connection with the business of steamship companies, or with any particular fixed line of contracts, has it? The contracts that come before you are as varied as the days of the year, for instance. * * *

A. A general average is apart from contracts altogether.

Mr. FRANK.—Q. It has nothing to do with them?

A. It has nothing to do with the contracts. [102—79]

Mr. MOORE.—Q. Have you had occasion at numerous times to observe what is the practice, if any, with respect to allowance to general agents of reimbursement to themselves for services rendered in connection with salvaging of vessels where their contracts provides that they shall have a fixed percentage of the freight earned or carried?

A. I have had numerous instances.

Q. Numerous instances? A. Yes.

Q. Will you name a few of the instances that you remember in which you have made observation in connection with that practice or custom?

A. Williams, Dimond & Co., agents of the

(Testimony of John A. Bishop.)

American-Hawaiian Steamship Company, Leonard Gray, who was the agent for the Cosmos Line, E. C. Evans, agent for some British ship owners, Balfour Guthrie & Co., agents for the Harrison Direct Line. We have had several instances for Williams, Dimond, as agents for the American-Hawaiian Line. I suppose I could name at least from six to eight without going back on my records at all.

Q. Would you do that, please?

A. In the case of the "Alaskan," belonging to the American-Hawaiian Line, Williams, Dimond & Co., were the general agents on the Coast; she was on fire in San Diego in 1910.

The "Pennsylvania" was also on fire down near Panama, bound for San Francisco; the "Anubis," of the Cosmos Line, went ashore in, I think it was, 1908, near Santa Barbara, on San Miguel Island; Lennon Gray was the agent for the Cosmos Line at that time. The "Pleiades" was ashore on the Southern California Coast, belonging to the Luckenbach Steamship Company, Williams, Dimond & Company were the agents. The "St. Nicholas," a British vessel, was on fire bound in to San Francisco, Balfour, [103—80] Guthrie & Co., were agents; the "Queen Alexandria" struck on the Columbia River Bar, putting in to San Francisco; E. C. Evans, of San Francisco, was agent.

Q. I will ask you to state whether or not, in all the cases mentioned by you occurring with respect to the vessels named, of which Williams, Dimond & Co., were agents, whether or not in each and every

(Testimony of John A. Bishop.)

of those cases the general agent was allowed compensation for the services rendered by him in connection with those vessels?

To this question counsel for plaintiff objected as follows:

"Mr. FRANK.—I object to the gentleman's competency to testify upon the question of custom, and in the second place I object to the question substantively on the ground that the evidence as to custom that is offered cannot be introduced as tending to vary the terms of the contract before us; this is not a question between the cargo owners and the freight owners, and the ship owners, but is purely and only a question between the ship owner and his agent, on a private contract. * * * I object to the question, as before, both as to the competency of the witness, and to the competency of the testimony, even if this man were competent to testify. This is not a question of compensation between principal and agent, but it is compensation entirely between different interests, and under entirely different circumstances. It has nothing to do with this question."

The Court thereupon sustained said objection, to which ruling counsel for the defendant duly excepted, and said exception is here designated

EXCEPTION No. EIGHT.

Q. I will ask you whether or not it is the custom in all cases where the general agents render services in connection with the salvage of the vessel, to not only allow him from his principal a compen-

(Testimony of John A. Bishop.)

sation for the general services in connection therewith, but an allowance of 2½ per cent on the total amount [104—81] of disbursements in connection therewith, if the money be that of his principal, and 5 per cent of the money be that of himself.

To which question the counsel for the plaintiff then objected in same manner and upon same grounds as the objection last hereinabove set forth, and the Court thereupon sustained said objection, to which ruling counsel for the defendant duly excepted, and said exception is here designated

EXCEPTION No. NINE.

I will ask you, Mr. Bishop, what is the fact as to whether or not there is a uniform custom in San Francisco, and has been for twenty years last past, of allowing general agents of steamers and steamship companies, special compensation for their services rendered in connection with salvaging of vessels, and a commission of 2½ per cent upon moneys advanced by them, if the money belongs to the owners, and 5 per cent in cases where the general agency contract specifies 5 per cent as the compensation therein mentioned in respect to freight earned.

To said question counsel for the plaintiff objected on the ground that the witness is incompetent to testify on the question of custom; that the question does not refer to compensation between principal and agent, but to compensation entirely between different interests, and entirely different circumstances; that it is immaterial; and further, upon the ground that the question is leading; and further,

(Testimony of John A. Bishop.)

that the question presupposes that the agent is to be paid 2½ per cent out of the money that the owner pays, and the Court thereupon sustained said objection, to which ruling counsel for the defendant duly excepted, and said exception is here designated

EXCEPTION No. TEN. [105—82]

Testimony of Wilfert Page, for Defendant.

WILFERT PAGE, a witness on behalf of the defendant, testified as follows:

Direct Examination.

I am an avereage adjuster, connected with George E. Billings Company, and I identify this book which I hold in my hand as an adjustment of the general average and salvage expenses in connection with the wreck of the "Sinaloa."

The counsel for the defendant thereupon offered in evidence the entries contained on page 226 of said book, reading:

"$3,165.27, C. Henry Smith remuneration
for account 5% commission on
$63,305.54..... ....$3,165.27"

To this offer counsel for plaintiff objected upon the ground that it is immaterial; that the general average account is not between plaintiff and defendant, but between different parties, viz.: ship, cargo and freight, none of which interests were in Mr. Lindvig; that it is outside of the issues, the counterclaim being a setoff based on services rendered, and not based upon account money had and received. The Court thereupon sustained said ob-

(Testimony of Wilfert Page.)

jection, to which ruling counsel for the defendant duly excepted, and said exception is here designated

EXCEPTION No. ELEVEN.

This is an adjustment of the general average and salvage expenses in connection with the wreck of the "Sinaloa." It was completed in August or September, 1918, and is printed or made with an electric pen, so that a number of copies are struck off. Copies of this book were turned over to A. O. Lindvig.

Q. You represented the cargo of the vessel, did you?

A. No. We were appointed by the charterers of the vessel.

Mr. FRANK.—Q. The Dupont Company, wasn't it? A. Yes. [106—83]

Mr. MOORE.—Q. I will ask you to state whether Mr. Lindvig ever thereafter or any member of his office, dissented from the item therein contained, the $3,165.27 allowed to Mr. Smith in connection with his services with respect to the salvaging of this vessel?

To this question counsel for the plaintiff objected as immaterial, and the Court thereupon sustained said objection, to which ruling counsel for defendant excepted, and said exception is here designated

EXCEPTION No. TWELVE. [107—84]

We were appointed by the Dupont Company. The vessel was carrying nitrate for the Dupont Company at the time she went on Cape Blanco.

(Testimony of Wilfert Page.)

Q. Was there any contribution to be made by the Dupont Company to the general average?

Mr. FRANK.—That is immaterial.

The COURT.—What is the purpose of this?

Mr. MOORE.—I want to show that so far as that cargo is concerned that Mr. Lindvig made demand upon that cargo based on the contribution made to the general average which would include the portion of the cargo through the payment of this item of $3,165.27 allowed to Mr. Smith.

The Court thereupon sustained said objection, to which ruling counsel for defendant duly excepted, and said exception is here designated

EXCEPTION No. THIRTEEN.

I did not have anything to do with the collection from the underwriters.

Q. So far as the cargo was concerned, do you know whether or not Mr. Lindvig has, in fact, collected from the cargo upon the basis of including in the general average this item of $3,165.27 allowed to Mr. Smith?

To which question counsel for the plaintiff objected as immaterial, and the Court thereupon sustained said exception, to which ruling counsel for the defendant duly excepted, and said exception is here designated

EXCEPTION No. FOURTEEN.

Testimony of John McClelland, for Defendant.

JOHN McCLELLAND, called as a witness for the defendant, testified:

I am an importing, exporting and shipping agent,

(Testimony of John McClelland.)

connected [108—85] with Henry Lund & Company. As a part of our business we have contracted for the building of ships and attending to the matter of payments. This has happened in three or four instances in the last several years. They were vessels built for the account of Norwegian owners; we simply contracted the vessels and supervised the payments. We did not actually superintend the building of any vessels, as we engaged engineers and surveyors to do that. We were acting as brokers. Brokers on the other side cabled us and asked us to quote them contracts for building, and we went to the builders and found out quotations for them and cabled them all the particulars of the specifications, the price, etc. We would give them a price, and, naturally, our commission would be included in that. If we gave any price that included our commission and the broker's commission on the other side. We gave the brokers on the other side a stated commission, and we got whatever we could out of it. All our charge was for brokerage in securing the contract.

I would consider a proper charge for the services of an agent, who would not only contract for the vessel, but watched out to see that the payments were properly made, and generally watched over the construction of the vessel, and attended to the transfer of her flag when the vessel was finally completed, in the case of a vessel the contract price of which was $450,000.00, I should think a proper

(Testimony of John McClelland.)

charge of five per cent would be a very reasonable percentage.

In the case of a vessel, the contract price of which was $775,000.00, the contracting for and general supervision over her construction, where he did not advance funds, but merely saw that the payments were made, the money being furnished by the owners would be one and a half per cent as a minimum—one and a [109—86] half to two per cent.

Cross-examination.

In the case of my answer of five per cent, the agent was not advancing the money himself, but was probably taking the trouble to go to the bank, and attending to the filing of the papers, but another reason for making the percentage larger was because the cost of the vessel was so much less. The percentage increases as the value of the vessel decreases. Where the price has been $775,000.00 or approximately that, we have got three per cent.

There is absolutely no standard commission to be charged, absolutely none. It is just a question where, if you have to do any cabling you can add on as much as you want. Naturally, if you want the business to go through you won't make the price too big, you will not add too big a commission. The sellers are the ones that usually pay the commission. There is no stated commission. There are usually two brokers, one representing the buyer, and the other the seller. There is no agreement between them. Suppose the Union Iron Works was

(Testimony of John McClelland.)

wanting so much money to build a certain boat, then we have to take care of the broker on the other side, and we figure it up. We add that on, and add our own, and telegraph over there that the cost is so much, and if they come back and accept it, we tell the Union Iron Works there is such and such a price, and in making the contract out it is added. The Union Iron Works pays the brokerage; we make an agreement with the owners for a certain price, say $500,000, and that is all the owners know about it. And then the Union Iron Works puts out its contract, and returns to me a certain percentage of the contract price. All the dealings are that way. There is no agreement at all with the purchaser. They don't know any more than the contract price. They know there must be [110—87] brokerage in it. We contracted for one vessel for over a $1,000,000.00, and our commission was around $20,000.00.

Testimony of Fred L. Doelker, for Defendant.

FRED L. DOELKER, called for defendant, *and* testified:

I am Traffic Manager of W. R. Grace & Company, and I supervise contract and commissions upon contracts for freight and cargo.

Q. I will ask you to state what would have been a reasonable commission to an agent for procuring a contract entered into with the Dupont de Nemours Powder Company here in San Fracnisco on the 10th of July, 1917, covering the carrying of forty

(Testimony of Fred L. Doelker.)

thousand tons of nitrate, 10 per cent more or less, from the Nitrate Range in Chile to San Francisco and/or Tacoma and/or Powder Point, Washington, within the period of one year commencing June 1, 1917, and ending June 1, 1918?

A. Our customary commission is 5 per cent on the gross freight.

Q. I will ask you to state whether or not that commission would be payable to the man who secured that contract whether or not he continued as the agent of the steamship line throughout the entire period that the contract referred to?

To which question counsel for the plaintiff object upon the ground that it is incompetent and immaterial, and thereupon the Court sustained said objection upon the ground that it is a question of law, to which ruling the counsel for the defendant then duly excepted, and said exception is here designated as

EXCEPTION No. FIFTEEN.

Mr. MOORE.—Q. Would that commission of five per cent be payable for the procuring of that contract irrespective of [111—88] whether or not the agent had anything himself to do with the actual carrying out of the contract?

Mr. FRANK.—The same objection.

The COURT.—I think that is all right. That is a question, of course, which would depend on the trade.

A. What is the question?

Q. Would that commission which you have men-

(Testimony of Fred L. Doelker.)

tioned apply to the agent's compensation whether he had anything to do with the carrying out of the contract after it was made?

A. I would think so; yes; it would apply; if he made the contract, he is entitled to his commission.

Q. It would be worth that, you think, simply for procuring the contract?

A. For procuring the contract, yes.

Cross-examination.

Mr. FRANK.—Q. In your business, you are simply a traffic agent for W. R. Grace & Co.?

A. Yes.

Q. And you procure freight for the vessels of W. R. Grace & Co.? A. Yes.

Q. That go between here and South America; Is that right? A. That is true, yes.

Q. In that capacity, you never make any outside contracts on commission, do you?

A. Not in that particular case, but we do make outside contracts.

Q. But you have never made any outside contracts—it is the same as a broker, is it not, a chartering broker? A. We go outside.

Q. Answer the question. * * *

Mr. FRANK.—Q. Mr. Doelker, a contract of that kind that was stated to you by counsel is simply of the nature of a [112—89] brokerage contract or a chartering, for instance, of the vessel?

A. As I understand it, it is a freighting contract.

Q. The same thing, isn't it?

A. It is a freighting contract.

(Testimony of Fred L. Doelker.)

Q. The same thing, isn't it?

A. I don't know what you mean by "the same thing."

Q. What is the difference between a freighting contract and a contract to charter a vessel to carry the freight?

A. A good deal of difference in chartering a vessel and making a freight contract for a vessel.

Q. As a matter of fact, if there is that difference, in your business, you have not been called upon to make any contracts for freight of vessels outside of the vessels you were operating yourself?

A. We operate on our own vessels, but we have to arrange contracts outside for cargo for which we have to pay a commission.

Q. You pay somebody else a commission?

A. Surely.

Q. That is the idea? A. Yes.

The COURT.—Q. Are you regularly in the emplay of W. R. Grace & Co.? A. Yes.

Q. You never make any independent charge yourself for any contract you negotiate?

A. Not that we negotiate; no.

Q. That is covered by your compensation?

A. We are operating a line. If we have to arrange contracts outside for cargo, we have to pay a commission.

Q. To other brokers?

A. To other brokers or ships, as the case may be.

Mr. FRANK.—Q. Did you ever make any annual contracts of that nature?

(Testimony of Fred L. Doelker.)

A. We have made annual contracts, yes. [113—90]

Q. With whom?

A. The American Smelting and Refining Company.

Q. Anybody else?

A. Nobody else since I have been there; there have been before.

Q. This one only? A. Yes.

Q. What commission did you pay for it?

A. We made that contract ourselves.

Q. You did not pay any commission?

A. For our own vessels we do not have to pay any commission.

Q. Then, as a matter of fact, there is no instance at all in which you have paid any commission or known of any commissions that have been paid in your business for getting a freighting contract?

A. There is when we have to go outside, yes, for freight.

Q. But you have not done it?

A. There may have been times when we have gone outside; yes.

Q. I asked you instances, and you mentioned one, and you say you did not pay for that. Now, is there any other?

A. That is an annual contract. We have had vessels at different times that did not have any cargo, and we had to pay a commission to get it.

Q. That is, a particular cargo for a particular vessel? A. Yes.

(Testimony of Fred L. Doelker.)

Q. What vessels, for instance?

A. I don't recall offhand.

Q. You don't recall any; don't you recall any of them at all? A. No.

Q. You do not recall any person to whom you paid such a commission, either, do you?

A. Yes. [114—91]

Q. To whom?

A. We have paid it to our West Coast house.

Q. To your own house, that is, down in South America? A. Down on the west coast.

Q. Not up here in San Francisco at all?

A. Not that I can recall.

Testimony of Fred W. Wallace, for Defendant.

FRED W. WALLACE, called as a witness for the defendant, *and* testified:

I am purchasing agent at San Francisco for the Dupont Powder Company. I have prepared a statement showing the dates and tonnage carried under, or during the year from July 1, 1917, to July 1, 1918, of nitrate, between the Nitrate Range of Chile and San Francisco, and Powder Point and Tacoma, Washington. The amount carried was 36,301.*00*, tons, but the amount carried thereunder prior to October 1, 1917, was 3,546 tons. The amount really carried under this contract subsequent to October 1st, concerning which there is a dispute, is 32,755.

Testimony of C. Henry Smith, for Defendant (Recalled).

C. HENRY SMITH, recalled as a witness for the defendant, testified:

Q. I will ask you to state whether or not Mr. Lindvig at any time claimed that you were not entitled to your commission on the "Regulus" until the time that he filed this suit.

To said question counsel for the plaintiff objected as immaterial, and also because it is asking for a conclusion and the Court thereupon sustained said objection, to which ruling counsel for the defendant duly excepted, and said exception is here designated as

EXCEPTION No. 17. [115—92]

Q. I will ask you to state whether or not Mr. Lindvig at any time, either said to you verbally or in writing, that you were not entitled to your commission on the "Regulus" prior to the first day of December, when a question was raised in regard to that matter in a letter written by Mr. Frank, which is carried into the bill of particulars?

To said question counsel for the plaintiff objected as incompetent and immaterial, and the Court thereupon sustained said objection, to which ruling counsel for the defendant duly excepted, and said exception is here designated as

EXCEPTION No. 18.

Testimony of John A. Bishop, for Defendant (Recalled.)

JOHN A. BISHOP, recalled as a witness for the defendant, testified:

Q. I will ask you to state whether or not you know what the custom is without referring now to any particular contract, what the custom is, if you know, in regard to allowing reimbursement for services by the agent in connection with the salvaging of vessels, where he has a general contract wherein the compensation specified is a percentage of the freight earned?

To said question counsel for the plaintiff objected as follows:

"Mr. FRANK.—I object to the gentleman's competency to testify upon the question of custom, and in the second place I object to the question substantively on the ground that the evidence as to custom that is offered cannot be introduced as tending to vary the terms of the contract before us; this is not a question between the cargo owners and the freight owners, and the ship owners, but is purely and only a question between the ship owner and his agent, on a private contract. * * * I object to the question as before, both as to the competency of the witness, and to the competency of the testimony, even if this man were competent t otestify. This is not a question of compensation between principal and agent, but it is compensation entirely between different interests, and under entirely different circum-

(Testimony of John A. Bishop.)

stances. It has nothing to do with this question."

The Court thereupon sustained said objection, to which ruling counsel for the defendant duly excepted, and said exception [116—93] is here designated as

EXCEPTION No. 19.

Q. I will ask you to state whether or not the custom, if any, is uniform, and has been for the last 20 years in this port, whereby general agents are allowed reimbursement for the services rendered by them in connection with the salvage of vessels, where their agency contract merely specified as their remuneration a certain percentage upon the freight earned?

To said question counsel for the plaintiff objected as follows:

"Mr. FRANK.—I object to the gentleman's competency to testify upon the question of custom, and in the second place I object to the question substantively on the ground that the evidence as to custom that is offered cannot be introduced as tending to vary the terms of the contract before us; this is not a question between the cargo owners and the freight owners, and the ship owners, but is purely and only a question between the ship owner and his agent, on a private contract. * * * I object to the question as before, both as to the competency of the witness, and to the competency of the testimony, even if this man were competent to testify. This is not a question, of compensation between principal and agent, but

(Testimony of John A. Bishop.)

it is compensation entirely between different interests, and under entirely different circumstances. It has nothing to do with this question."

The Court thereupon sustained said objection, to which ruling counsel for the defendant duly excepted, and said exception is here designated as

EXCEPTION No. 20. [117—94]

The defendant further testified as follows:

I entered into this contract of agency with Mr. Lindvig in 1914. Began operations in the end of 1914. We got the first ship in Europe in 1914, the "Baja California," the *the* "Sinaloa" came along; operated on this coast with these two boats. The business increased with the demand for cargo space, and to meet that increased business the "Governor Forbes" was bought and put on the run.

Then the "Regulus" was bought for the same purpose, and put upon the run. She was built for that purpose, and put upon that run.

The "Romulus" was being built for the same purpose, and intended for the same business.

I made no charge for the commission on the "Governor Forbes" until October 21, 1917.

Mr. MOORE.—Q. Mr. Smith, how did it happen that your commission on the "Governor Forbes" did not appear in your accounts to Mr. Lindvig prior to October 1, 1917?

A. Well, because I was in Europe in the end of 1916 and came back in the beginning of 1917, and I was so busy with everything that I had no time

(Testimony of John A. Bishop.)

to look through the accounts until I got back and put the accountants on the whole account, and I discovered it was not charged.

I rendered many accounts to Mr. Lindvig during the period from January up to October 21, 1917. In none of these accounts does this charge anywhere appear, except that one of October 21, 1917.

The witness is here shown Plaintiff's Exhibit 1, and asked what it purports to be:

A. That is a supplementary statement to cancel general account July 14, 1917. That is dated July 16, 1917. It has nothing at all in it about the "Governor Forbes," nor [118—95 to 97] anything in it about compensation for the "Regulus," and nothing in it about compensation for Hull 154.

The account is offered in evidence, marked Plaintiff's Exhibit 1, and is as follows: [119—98]

Plaintiff's Exhibit No. 1.

Mr. A. O. Lindvig,

In account with C. HENRY SMITH.

Supplementary a/c to Cancel Gen. a/c July 14/17.

DEBIT.

Deposited First National Bank (last Bal)		$ 24,138.36
May 9.	Western Union Telegraph Co., Service	55.66
10.	Postal Telegraph Co., Service	12.22
28.	Commercial News Pub. Co., Adv.	20.00

	15.	O'Connel & Davis, Printing	112.00
June	20.	Guide Publishing Co., Adv..	40.00
	20.	Postal Telegraph Co., Service	5.17
	20.	Western Union Telegraph Co., Service	82.65
July	9.	Union Iron Works, A/C Hull #154	77,500.00
			$101,966.06

CREDIT.

Balance Transferred from Baja Calif. V. 11	$ 41,523.86
Balance Transferred from Gov. Forbes V. 2	9,957.37
Advanced a/c Mrs. Petra Smith.....	300.00
2½% on $77,500.00 as per contract on on Hull #154	1,937.50
Balance due C. Henry Smith.....	48,247.33
	$101,966.06

San Francisco, July 16, 1917.

Canceled

(Pencil notation.) [120—99]

The witness is then shown another account, and asked what it purports to be:

A. That is a supplementary statement to cancel the account of July 16th, and is dated September 11th, 1917, and is a substitute for both the account of July 14th and July 16th. That has noth-

ing in it about compensation for the "Governor Forbes," or compensation for the "Regulus" or compensation for Hull 154.

The account is offered in evidence, marked exhibit 2 and is as follows: [121—100]

Plaintiff's Exhibit No. 2.

A. O. Lindvig,

In Account with C. HENRY SMITH.

Supplementary a/c to Cancel General a/c July 16, 1917.

DR.

May	9.	Western Union Telegraph Co., Service	55.66
	10.	Postal Telegraph Co.....	12.22
	28.	Commercial News Publishing Co. (Advt.)	20.00
	15.	O'Connel & Davis (Printing)..	112.00
June	20.	Guide Publishing Co. (Advt.)	40.00
	20.	Postal Telegraph Co. (Service)	5.17
	20.	Western Union Telegraph Co., (Service)	82.65
July	9.	Union Iron Works Co. (a/c Hull #154).....	77,500.00
			77,827.70

CR.

Balance Transferred from "Baja Calif." V–11	41,523.86
Balance Transferred from "Gov. Forbes" V–2	9,957.37

Advanced a/c Mrs. Petra Smith.....	300.00
2½% on $77,500.00 as per contract Hull 154	1,937.50
Balance due C. Henry Smith.....	24,108.97
	77,827.70

San Francisco, Calif., September 11, 1917. [122—101]

At the time of this transaction I knew the date that my contract was to expire. I don't recall the date exactly when the arrangement was made to extend my agency to October 1st, but it was about the same time I presume. About August 1st is the first time I heard of the turning over of the agency. Nothing was said before that. On August first I know that the business was going to leave me. The two months after that were to enable me to straighten out my affairs and my business.

The witness is then shown another account, Plaintiff's Exhibit 3, and asked what it is, and testifies:

That is a corrected statement—a final statement—supplemental statement, dated October 15, 1917. That is the next statement after those two that are already in evidence, that I made to Mr. Lindvig. It is the first statement in which appears a charge for attending to payments, etc., Hull 154, etc. And also the first statement of commissions on Dupont Powder Company, etc., $25,517.00.

(Testimony of John A. Bishop.)

There is nothing in here about the "Governor Forbes." This is October 15, 1917.

Q. Now, I call your attention, Mr. Smith, to the order of dates on the debit side of this account, July, August, September, October, then begins June 1st, and under date of June 1st, are those two charges to which I have just called your attention?

A. Yes.

Q. Why was that?

A. Well, because Hull 154 was just about turned over, and we were winding up the affairs at that time, and the "Governor Forbes" charge was omitted. It was an oversight, because I was away and I was busy.

This is an absolutely correct statement.

The account was introduced in evidence, marked Plaintiff's Exhibit No. 3, and is as follows: [123—102]

Plaintiff's Exhibit No. 3.

A. O. Lindvig,

In a/c C. Henry Smith.

DEBITS.

July	20.	Balance due C. Henry Smith per corrected statement 9/11/17	24,108.97
	12.	O'Connell & Davis—Staty.....	131.25
	17.	Bank of Italy Int. on Loan to pay Union Iron Works....	87.50
	23.	Western Union Teleg. Co., Telegrams	5.23
	23.	Consul of Norway.....	17.86

Aug.	8.	Union Iron Wks. a/c Hull 154	77,500.00
	16.	Com'l News Pub. Co., Advertising	20.00
	16.	Consulate of Norway, Telegrams	10.81
	16.	Union Iron Wks. a/c. Hull 154	77,500.00
	16.	Bank of Italy Int. on Loan to pay U. I. Wks.....	88.30
	16.	Postal Telegraph Co., Telegrams	29.67
	21.	C. H. Smith, Deposit by Harold S. With Letter 7/9/17.	173.00
	22.	Com'l News Pub. Co., Advertising	20.00
	24.	Deposit First Natl. Bk. Cash on a/c Baja-California & Governor Forbes	75,000.00
	25.	Guide Publishing Co., Advertising	40.00
	30.	B. Lindvig, Cash.....	10,000.00
	30.	Town Taxi Co. (July) a/c New Bldg.	4.60
	31.	Western Union Teleg. Co., Co., Telegrams	31.17
Sept.	4.	B. Lindvig, Cash	100.00
	4.	Tait's Cafe	26.15
	4.	C. D. Bunker & Co., Custom Fee Pre-entry Bond	.40
	7.	Western Union Teleg. Code Co., Books	11.00

	6.	Legation of Norway, Wash., Telegrams	24.70
	13.	Consulate of Norway.....	94.00
	14.	Postal Telegraph Co., Telegrams	11.28
	25.	Western Union Teleg. Co., Telegrams	27.58
	25.	Deposit First Natl. Bk. Bal. due a/c Baja-California & Gov. Forbes	27,717.74
	29.	Disbts. 1915/16 a/c Baja-California not reported	386.75
	29.	Disbts. 1916 a/c Sinaloa, not reported	20.65
Oct.	4.	Town Taxi Co. Aug. & Sept. a/c New Bldg.....	3.60
	10.	Pacific Telephone & Tel. Co. (Switching)	.40
June	1.	Andros & Hengstler, Legal Serv. Gov. Forbes.....	187.50
		Office Remuneration.	
		Sinaloa Salvage a/c	66,470.81
		Office Remuneration for handling contract Union Iron Works. a/c Hull 154, attending to payments, etc...	10,000.00
		Baja-California V. 12 Supplementary a/c	3,302.14
		Regulus V. 3 Supplementary a/c	5,039.63
		Commission on Dupont Powder contract 40000 tons	

(Testimony of John A. Bishop.)

less Baja-California V. 12 shipped 2507 tons Regulus V. 3—1039 tons total 3546 tons. Balance to ship 36454 tons @ 14.00 average $510356.00 @ 5% 25,517.80

Balance due A. O. Lindvig.... 31,853.90

435,564.39

[124—103]

A. O. Lindvig

In A/C C. Henry Smith.

CREDITS.

July 17.	Remittance a/c Union Iron Works, Hull 154.....				75,000.00
Aug. 16.	Remittance a/c Union Iron Works, Hull 154.....				75,000.00
Sept. 29.	Baja-California Voy.	12	Balance.....		57,895.61
29.	Governor Forbes "	3	"		44,822.13
29.	Regulus "	2	"		146,565.58
Oct. 11.	Governor Forbes "	3	" Supple. a/c.....		123.10
12.	Sinaloa "	9	"		32,282.97
	2 1/2% on 155000.00 per contract Hull 154.....				3,875.00

435,564.39

Oct. 15/17. [125—104]

Q. If it is absolutely correct why then did you give him another account of which this is a copy?

A. I mean this one is correct.

Q. Then the other one was not correct? This is a corrected statement, A. O. Lindvig in account C. Henry Smith, Supplemental Statement, dated October 15, 1917: Is that right?

A. Yes. That was delivered about the same time. I have not got the date in my head.

(Testimony of John A. Bishop.)

Q. Now, Mr. Smith, wasn't that delivered about the 21st day of November, 1917, the corrected statement, and was it not the one that was referred to in the letter of November 24, 1917?

A. I can't recall the date. The expert accountant can give you that.

Q. Now, I call your attention, Mr. Smith, that in that account which you say is correct, there is no mention of the "Governor Forbes," is there?

A. No, not on that one; the other one there is.

Q. None of these that I have handed you up to this time? A. No.

Q. This you have called the final statement supplementing statement dated October 15th, 1917, and which you say is correct? A. Yes.

The document is marked Plaintiff's Exhibit No. 4, and is as follows: [126—105]

Plaintiff's Exhibit No. 4.

CORRECTED STATEMENT,
A. O. LINDVIG,
IN A/C
C. HENRY SMITH.

FINAL STATEMENT—Supplementing statement dated October 15, 1917.

DEBITS.

July 20.	Balance due C. Henry Smith per corrected Statement 9/11/17	24108.97
" 12.	O'Connell & Davis, Staty.	131.25
" 23.	Western Union Teleg. Co., Telegrams	5.23
" 23.	Consul of Norway "	17.86
" 8.	Union Iron Works a/c Hull 154	77500.00
Aug. 16.	Com'l News Pub. Co., Advertising	20.00
" 16.	Consulate of Norway, Telegrams	10.81
" 16.	Postal Telegraph Co., "	29.67
" 21.	C. H. Smith. Deposit by Harold S. With Letter 7/9/17	173.00

Aug. 22.	Com'l News Pub. Co., Advertising.....	20.00
" 24.	Deposit First Natl. Bk., Cash on a/c Baja-California & Gov. Forbes 75000.00	
" 25.	Guide Publishing Co., Advertising.....	40.00
" 30.	B. Lindvig, Cash 10000.00	
" 30.	Town Taxi Co. (July), a/c New Bldg.	4.60
" 31.	Western Union Tel. Co., Telegrams.....	31.17
Sept. 4.	B. Lindvig, Cash.....	100.00
" 4.	Tait's Café	26.15
" 4.	C. D. Bunker & Co., Custom fee pre-entry bond	.40
" 7.	Western Union Tel. Code Co., Books.....	11.00
" 6.	Legation of Norway, Wash., Telegrams....	24.70
" 13.	Consulate of Norway	94.00
" 14.	Postal Telegraph Company, Telegrams.....	11.28
" 25.	Western Union Teleg. Co., Telegrams.....	27.58
" 25.	Deposit First. Natl. Bk., Bal. due a/c Baja-California & Gov. Forbes.....27717.74	
" 29.	Disbts. 1915/16 a/c Baja-California not reported	386.75
" 29.	Disbts. 1916 a/c Sinaloa, not reported.....	20.65
Oct. 4.	Town Taxi Co., Aug. & Sept. a/c New Bldg.	3.60
" 10.	Pacific Telephone and Tel. Co. (Switching)	.40
" 16.	Andros & Hengstler, Legal Serv. Gov. Forbes	187.50
" 17.	Barkentine Alta a/c Insurance credited twice as per letter A. O. Lindvig, Aug. 27/17	1807.50
" 29.	Commercial News Pub. Co., Advt. June/17.	20.00
" 31.	Purser's Cash on hand after each voyage and taken up in account by same a/c	
	Gov. Forbes Voyage #3.....	55.38
	Gov. Forbes Voyage #4.....	173.14
" 31.	Balance due a/c closing Baja-V. 12.....	1.01
" 17.	Deposit First National Bank on a/c balance due Oct. 15th 25000.00	
Oct. 8.	Office Remuneration for procuring and handling contract Union Iron Wks., a/c Hull 154, attending to payments, etc. 10000.00	
	Sinaloa Salvage Account 66470.81	
	Baja-California V. 12 Supplementary a/c....	3302.14
	Regulus V. 3	5039.63

Oct. 12. Commission on Dupont Powder contract, procuring same, 40000 tons less Baja-California Voyage #12, shipped 2507 tons, [127—106].

A. O. LINDVIG,
IN A/C
C. HENRY SMITH,
DEBITS. 403710.49

July 20.	Balance due C. Henry Smith, per Corrected statement 9/11/17	24108.97
July 12.	O'Connell & Davis, Staty.	131.25
" 17.	Bank of Italy Int. on Loan to pay Union Iron Works	87.50
" 23.	Western Union Teleg. Co., Telegrams	5.23
" 23.	Consul of Norway, Telegrams	17.86
" 8.	Union Iron Works a/c Hull 154	77500.00
Aug. 16.	Com'l. News Pub. Co., Advertising	20.00
" 16.	Consulate of Norway, Telegrams	10.81
" 16.	Union Iron Wks., a/c Hull 154	77500.00
" 16.	Bank of Italy—Int. on Loan to pay U. I. Wks.	88.30
" 16.	Postal Telegraph Co., Telegrams	29.67
" 21.	C. H. Smith, Deposit by Harold S. With Letter 7/9/17	173.00
" 22.	Com'l. News Pub. Co., Advertising	20.00
" 24.	Deposit First Natl. Bk. Cash on a/c Baja-California & Governor Forbes	75000.00
" 25.	Guide Pub. Co., Advertising	40.00
" 30.	B. Lindvig, Cash	10000.00
" 30.	Town Taxi Co. (July), a/c New Bldg.	4.60
" 31.	Western Union Teleg. Co., Telegrams	31.17
Sept. 4.	B. Lindvig, Cash	100.00
" 4.	Tait's Café	26.15
" 4.	C. D. Bunker & Co., Custom Fee Pre-entry Bond	.40
" 7.	Western Union Teleg. Code Co., Books	11.00
" 6.	Legation of Norway, Wash., Telegrams	24.70
" 13.	Consulate of Norway	94.00
" 14.	Postal Telegraph Co., Telegrams	11.28
" 25.	Western Union Teleg. Co., Telegrams	27.58
" 25.	Deposit First Natl. Bk. Bal. due a/c Baja-California & Gov. Forbes	27717.74

(Testimony of John A. Bishop.)

Sept. 29.	Disbts. 1915/16 a/c Baja-California not reported	386.75	
" 29.	Disbrs. 1916 a/c Sinaloa, not reported	20.65	
Oct. 4.	Town Taxi Co., Aug. & Sept. a/c New Bldg.	3.60	
" 10.	Pacific Telephone & Tel. Co. (Switching)	.40	
June 1.	Andros & Hengstler, Legal Serv. Gov. Forbes	187.50	
	Office Remuneration:		
	Sinaloa Salvage A/C	66470.81	
	Remuneration a/c Hull 154 Contract Union Iron Works	10000.00	
	Baja-California V. 12 Supplementary a/c	3302.14	
	Regulus V. 3 Supplementary a/c	5039.63	
	Commission on Dupont Powder contract 40000 tons less Baja-California V. 12 shipped 2507 tons Regulus V. 3—1039 tons—Total 3546 tons. Balance to ship 36454 tons @ 14.00 average 510356.00 @ 5%	25517.80	
	Balance due A. O. Lindvig		31853.90
			435564.39

[128—107]

A. O. LINDVIG,
IN A/C
C. HENRY SMITH,
CREDITS.

July 17.	Remittance a/c Union Iron Works, Hull 154		75000.00
Aug. 16.	Remittance a/c Union Iron Works, Hull 154		75000.00
Sept. 29.	Baja-California Voy. 12 Balance		57895.61
" 29.	Governor Forbes " 3 "		44822.13
Sept. 29.	Regulus " 2 "		146565.58
Oct. 11.	Governor Forbes " 3 " Supple. a/c		123.10
" 12.	Sinaloa " 9 "		32282.97
	2 1/2% on 155000.00 per contract Hull 154		3875.00
			435564.39

[129—108]

(Testimony of John A. Bishop.)

The witness is then shown another account, and asked what that purports to be:

A. That is a substituted statement for the statement dated October 15, 1917.

Mr. FRANK.—I call your attention to the last item there, November 8th on that; it was after November 8th?

A. Yes.

Q. That is the last account you sent to Mr. Lindvig, is it not? The other was supposed to be a final statement, and this is a substitute for it?

A. Yes, that is the 1st. That is the first time I ever made mentioned of the "Governor Forbes" commission in this account. The entry is under date of October 31, "Commission on purchase of the 'Governor Forbes' $340,000 at 2 per cent, omitted former statement by mistake, as per offer August 18, 1916."

The document is offered in evidence, marked Plaintiff's Exhibit No. 5, and is as follows: [130—109].

Plaintiff's Exhibit No. 5.

CORRECTED STATEMENT.

A. O. LINDVIG,

IN A/C

C. HENRY SMITH,

Substituted for Statement Dated October 15, 1917.

DEBITS.

July 20.	Balance due C. Henry Smith per statement July 20 as corrected 9/11/17	24,108.97
12.	O'Connell & Davis, Staty.	131.25
23.	Western Union Telegraph Co., Telegrams	5.23
23.	Consul of Norway	17.86
8.	Union Iron Works a/c Hull 154	77,500.00

Aug. 16.	Com'l News Pub. Co., Advertising.....	20.00
16.	Consulate of Norway, Telegrams.....	10.81
16.	Postal Telegraph Co., Telegrams.....	29.67
21.	C. H. Smith, Deposit by Harold S., With Letter 7/9/17	173.00
22.	Com'l News Pub. Co., Advertising.....	20.00
24.	Deposit First Natl. Bl. Cash on a/c Baja-California & Gov. Forbes	75,000.00
25.	Guide Publishing Co., Advertising	40.00
30.	B. Lindvig, Cash	10,000.00
30.	Town Taxi Co. (July), a/c New Bldg.	4.60
31.	Western Union Tel. Co., Telegrams.....	31.17
Sept. 4.	B. Lindvig, Cash	100.00
4.	Tait's Café	26.15
4.	C. D. Bunker & Co., Custom fee pre-entry bond....	.40
7.	Western Union Tel. Code Co., Books.....	11.00
6.	Legation of Norway, Wash., Telegrams.....	24.70
13.	Consulate of Norway,.....	94.00
14.	Postal Telegraph Co., Telegrams	11.28
25.	Western Union Teleg. Co., Telegrams.....	27.58
25.	Deposit First Natl. Bk. Balance due a/c Baja-California & Gov. Forbes	27,717.74
29.	Disbts. 1915/16 a/c Baja-California not reported..	386.75
29.	Disbts. 1916 a/c Sinaloa, not reported.....	20.65
Oct. 4.	Town Taxi Co., Aug. & Sept. a/c New Bldg.	3.60
10.	Pacific Telephone & Tel. Co. (Switching).....	.40
16.	Andros & Hengstler, Legal Serv. Gov. Forbes....	187.50
17.	Barkentine Alta a/c Insurance credited twice as per letter A. O. Lindvig, Aug. 27/17.....	1,807.50
29.	Commercial News Pub. Co., Advt. June/17.....	20.00
31.	Purser's Cash on hand after each voyage and taken up in account by same a/c Gov. Forbes Voyage #3	55.38
	Gov. Forbes Voyage #4	173.14
31.	Balance due a/c closing Baja-V. 12.....	1.01
17.	Deposit First National Bank on a/c balance due Oct. 15th	25,000.00
8.	Office Remuneration for procuring and handling contract Union Iron Wks. a/c Hull 154, attending to payments, etc.	10,000.00
	Sinaloa Salvage Account	66,470.81
	Baja-California V. 12 Supplementary a/c.....	3,302.14
	Regulus V. 3	5,039.63

12.	Commission on Dupont Powder contract 40000 tons less Baja-California V. 12 shipped 2507 tons Regulus [131—110]. V. 3—1039 tons—Total 3546 tons. Balance to ship 36454 tons @ 14.00 average $510356.00 @ 5%—(See letter attached)	25,517.80
Oct. 31.	Commission on Inward Freight Gov. Forbes V. 3 $40993.00—5%	2,049.65
31.	Commission on Coastwise Freight Baja-California V. 12 as per statement Duncan, Fox & Company, Oct. 10/17—£789-19-2 @ 4.75½, #3756.45 3½%..	131.47
Nov. 5.	E. I. Du Pont de Nemours Co., amount due a/c over-payment freight Nitrate Ex. Sinaloa Voyage #8..	3,119.12
Oct. 31	Disbursements B. Lindvig, on a/c as per statement rendered	5,485.84
31.	Amount due Milne, Williamson Co., Guayaquill, Ecudor for freight and disbursements S. S. Governor Forbes per letter October 20th	2,799.98
31.	Commission on Purchase Gov. Forbes $340,000.00 @ 2%—omitted former statements by mistake—as per offer August 18th, 1916	6,800.00
31.	Deposit First National Bank on a/c	56,443.86
	Amount held in suspense during computation of bookings	5,000.00
		434,921.64

[132—111].

A. O. LINDVIG,
IN A/C
C. HENRY SMITH,
CREDITS.

July 17.	Remittance a/c Union Iron Works Hull 154	75,000.00
Aug. 16.	Remittance a/c Union Iron Works Hull 154	75,000.00
Sept. 29.	Baja-California V. 12—Balance	57,895.61
29.	Governor Forbes V. 3—Balance	44,822.13
29.	Regulus V. 2—Balance	146,565.58
Oct. 11.	Governor Forbes V. 3—Balance Supple. a/c	123.10
12.	Sinaloa V. 9—Balance	32,282.97
17.	Barkentine Alta a/c, Insurance paid per letter A. O. Lindvig, Aug. 27/17	265.50
17.	Barkentine Alta a/c, Telegrams paid per letter A. O. Lindvig, Aug. 27/17	70.00
31.	Charged in error Sinaloa V. 9 a/c Gen'l. Petroleum Co. San Pedro Barging	35.00

(Testimony of John A. Bishop.)

31.	Sinaloa V. 9. Error check Getz Bros 245.59—245.49	.10
31.	Gov. Forbes V. 2 Union Oil Co. Credit not reported	555.00
Nov. 8.	Amount overcharged on statement Sinaloa Salvage a/c Geo. W. Price Pump & Engine Company	200.00
	Commission on same—5%	10.00
	2 1/2% on $77500.00 per contract Hull 154	1,937.50
	Consular fees charged in error—Regulus V. 2, Supplementary a/c—W. C. Dawson, Seattle	62.40
	Chilian Consulate	96.75
		434,921.64

[133—111]

On direct examination I suggested in regard to services in getting the "Governor Forbes" that I had considerable trouble in getting the flag, and having a trial in the Supreme Court to have the title passed, and things of that sort. I engaged attorneys to attend to it, for the purpose of appealing to the Supreme Court.

Q. Now I call your attention to this contract, Mr. Smith:

> "The Seller, on or before October 10, 1916, is to secure the consent necessary from any and all public authorities to transfer and convey the entire interest of every kind and nature in said steamer to Purchaser absolutely. Said consent or a certified copy of an order or letter giving said consent, shall be deposited with the Hongkong & Shanghai Banking Corporation at Manila, P. I., immediately after said consent is given. Notification that said consent has been secured and delivered shall be given at the same

(Testimony of John A. Bishop.)

time by cable message to said C. Henry Smith, Incorporated, at San Francisco, etc."

Now, did the seller do that?

A. He did that with my assistance. You might say that I volunteered in the matter; that is what I meant when I said I had trouble about getting it in Manila in the Supreme Court. I knew when these bookings that are in dispute for subsequent to October 1st were being made that they were being made in my office in the manner in which they were made.

Q. You have no complaint with respect to that at all.

A. I have only a complaint that they were taken away. That is all I am complaining about. I understood that if the vessels were to go over into the new control on October 1st, it was necessary in order that they should continue the business, that they should go in that way.

Referring to Mr. Wallace's reports on the Nitrate shipment, they show two shipments in August, one on the "Baja California" and the other on the "Regulus," made while in my office. I got the commissions on those two shipments.

There is a difference between Mr. Wallace's report with regard to the second shipment and the figures in my office, Mr. Wallace's report is 957.94, and my office 1039.05. [134—112]

Q. In the letter received by you from Mr. Lindvig, dated August 29, 1917, the following occurs:

"As formerly told you there was no voucher regarding your remuneration account building

(Testimony of John A. Bishop.)

steamship 'Regulus,' $6,000.'' That refers, does it not, to a letter written to you by Mr. Lindvig dated July 18, 1917?

A. Yes, that is very possible.

The matter referred to in the letter of July 18, 1917, reads as follows:

''*Your statement of 1st June.* As far as I can see hitherto, there is no voucher concerning the item 'Remuneration a/c Regulus $6000.' Please explain same.'' (Plffs. Ex. 10.)

I replied to Mr. Lindvig's letter of August 29, 1917, as follows:

''*Statement of June 1st.* Regarding this voucher, we have sent you one, as far as I remember, and it is for attending to contract, making payments and keeping books for this vessel and also for protecting the contract.''

The business of Mr. Silva in my office had to do with attending to the business of these particular steamers. I had no other steamers at that time.

Under this agency agreement I had quite a large number of duties to perform and did perform during the agency; I made contracts for freightage, saw that the freightage was procured and delivered alongside, and that it was stevedored and put on board, and that it was transported to its place of destination, and then discharged in a proper manner, and delivered to the consignees.

Q. You also, in the course of your agency, attended to the making of all contracts respecting the supplies,

(Testimony of John A. Bishop.)

the oil, and the general equipment of all the vessels, did you not?

A. I made contracts for oil, but that was outside of the agency agreed on. I did not buy any supplies for the vessels. I paid the bills. I saw that arrangements for repairs are made. Whatever men were employed to do it, were doing it for me. Among these repairs was repairs to the "Sinaloa" amounting to $135,000. I treated that in the same manner as part of my contract. I collected the freights. Under my [135—113] agency that was part of my business, and to account for them and pay all the bills. After I collected the freights, I got in the bills and paid them, that was part of the business that was done after the ship had delivered her cargo.

I am making a claim in the "Sinaloa" salvage matter that I advanced my own moneys. During June and July 1917.

When I collected these freights from these several vessels on their several voyages, I deposited them in my own name, and made all the payments in my own name. I had a single account for my private moneys and for these moneys that were collected, one single deposit, unsegregated. Outside of the contracts of the "Governor Forbes" and Hull 154, all the rest of the business was done in my own name. The bills of lading ran in my own name. The signature was by the agent of said steamer, C. & C. Inc., for C. Henry Smith, Inc.

They are the agents for C. Henry Smith, Incorporated.

(Testimony of John A. Bishop.)

It was run entirely in my own name. We changed the bills of lading later, at Mr. Lindvig's suggestion. I changed them to read "South America Pacific Line, C. Henry Smith, Inc., Agents." That was in April, 1917. That was the way I conducted all of the business, so far as the operating is concerned. I first took these moneys and mixed them with my own moneys in my own account, and afterwards when I sent a statement and wanted to send any money to Mr. Lindvig, that particular money was taken out and put into the First National Bank and by that Bank transferred to Norway. All of the money went into my private account when it came in.

Three copies of bills of lading were then offered in evidence, and marked Plaintiff's Exhibit 16, and are as follows: [136—114]

Plaintiff's Exhibit No. 16.

(1st Bill of Lading:)

(In large caps) "C. HENRY SMITH, INC.
311 California Street,
San Francisco,
U. S. A.

(2nd Bill of Lading:)

(In large caps) "C. HENRY SMITH, INC.
311 California Street,
San Francisco, U. S. A.
LOCAL BILL OF LADING.

RECEIVED from Mohns Commercial Company shipment from Seattle by Steamer "Sinaloa" of C. HENRY SMITH, INC., or any other of said Com-

pany's Steamers, or steamers employed by it, the following Merchandise

2. The said packages are to be forwarded with such reasonable dispatch as the general business of the Carriers will permit, by Steamer or Steamers of C. HENRY SMITH, INC., upon and under the same agreement and subject to all of the said Stipulations and Conditions hereon, and ON THE REVERSE SIDE hereof, to the port of destination or so near thereto as safe navigation of such vessel or vessels shall then permit (but with option to the Master of the vessel or vessels to sail without pilots, tow and assist vessels, deviate, and to lighter, surf, tranship, land and reship said packages or any thereof, and to stop and to land and receive passengers and freight at other ports or places on or off the usual route and in any other), and there, at vessel's tackles, and in like condition to be delivered unto the consignee or his or their assigns or representatives, or if he or they be not on hand to so receive the same, or if said packages be destined beyond said port or place then to any lighterman or wharfinger or to any forwarder or other Carrier for and instead of the said named person, company, assigns, corporation or representatives; and freight at tariff rates (unless otherwise agreed) and all charges advanced by Carriers and average shall be paid in full in ——— on any such delivery, and full freight charges to be so paid on all damaged or unsound packages; and to secure payment of all such charges said packages are hereby pledged to Carrier.

16. C. Henry Smith, Inc., reserves the right, in the event of any trouble arising between the Company and any of the Central American Republics, to store the cargo at the risk and expense of owner, shipper and/or consignee until such time as it may be convenient to carry same forward for delivery,

IN WITNESS WHEREOF, the Agent of said STEAMER hath signed two Bills of Lading, one of which Bills of Lading being accomplished the others to stand void. And the Shipper has also signed this Bill of Lading.

Dated at Seattle, Wash., this 15th day of January, 1917.

F. C. & CO., INC.

G. C., For C. HENRY SMITH, INC. [137—115]

All of the provisions above and on the REVERSE SIDE of this BILL OF LADING are hereby agreed to on the part of the SHIPPER.

MOHNS COMMERCIAL COMPANY,
Shipper.
Per A. K. ALTENBACH.

Read conditions of Special Contract on the Reverse Side before Signing.

36. Carrier's liability hereunder shall be several and shall end and its rights dependent on delivery accrue immediately it has made delivery as above provided; and if freight be prepaid to Carrier beyond said first mentioned place of delivery. Carrier shall be shipper's agent for payment to other carrier of such freight as may be so paid for other carrier's use; and freight of every carrier of said packages by water other than C. Henry Smith, Inc.,

shall, at option of such carrier, be deemed earned when said packages shall be laden on board other carrier's vessel and shall be payable by shipper whether such other carrier's vessel or said packages be thereafter lost or not lost at any stage of entire transit;—no carrier shall be liable for delay or misdelivery or conversion or loss or damage unless it be shown that same occurred while said packages were in its possession."

"SOUTH AMERICA PACIFIC LINE.
C. HENRY SMITH, INC.,
Agents.
311 California St.,
San Francisco, U. S. A.

BILL OF LADING.

RECEIVED from C. Henry Smith for shipment from Port Ludlow, Wash., by Steamer "Regulus" of C. Henry Smith, Inc., Agents, or any other of said Company's Steamers, or Steamers employed by it, the following merchandise: ———

2. The said packages are to be forwarded with such reasonable dispatch as the general business of the Carriers will permit, by Steamer or Steamers of C. HENRY SMITH, INC., Agents, upon and under the same agreement and subject to all of the said Stipulations and Conditions hereon, and ON THE REVERSE SIDE hereof, to the port of destination or so near thereto as safe navigation of such vessel or vessels shall then permit, (but with option to the Master of the vessel or vessels to sail without pilots, tow and assist vessels, deviate, and to lighter, surf, tranship, land and reship said pack-

ages or any thereof, and to stop and to land and receive passengers and freight at other ports or places on or off the usual route, and in any order), and there, at vessel's tackles, and in like condition to be delivered unto the Consignee or his or their assigns or representatives, or if he or they be not on hand to so receive the same, or if said packages be destined beyond said port or place then to any lighterman or wharfinger or to any forwarder or other Carrier for and instead of the said named person, Company, assigns, corporation or representatives; and freight at tariff rates (unless otherwise agreed) and all charges advanced by Carriers and average shall be paid in full in U. S. Gold Coin on any such delivery, and full freight charges to be so paid on all damaged or unsound packages; and to secure payment of all such charges said packages are hereby pledged to [138—116] Carrier.

IN WITNESS WHEREOF, The Agent of said STEAMER hath signed one BILL OF LADING, one of which Bills of Lading being accomplished the others to stand void. And the Shipper has also signed this Bill of Lading.

Dated at Port Ludlow, this 4th day of September, 1917.

R. S. H.

For C. HENRY SMITH, INC., Agents.

All of the provisions above and on the REVERSE SIDE of this BILL OF LADING are hereby agreed to on the part of the SHIPPER.

C. HENRY SMITH,

By ————————————,

Shipper.

Read Conditions of Special Contract on the Reverse Side Before Signing.

A letter marked Defendant's Exhibit 4–O is as follows:

Defendant's Exhibit No. 4–O.

"San Francisco, October 24, 1917.

"Mr. C. Henry Smith,

"311 California St.,

"San Francisco, Cal.

"Dear Sir.

"Replying to your favor of even date, in connection with the balance due our principal, as stated by you, we have the statement of the Sinaloa V–9, Governor Forbes Supplementary V–3, Baja California Supplementary V–12, and Regulus Supplementary V–2; besides the above, we require a statement covering the general average disbursements on account of the stranding of the Sinaloa, and also a general statement showing the balance due our principal to date.

"We will thank you for your prompt attention regarding this matter, as our principal is asking us to obtain all of these documents, and upon receipt of same, we will settle all matters pending between us.

"Regarding the inward freight on the 'Governor Forbes,' this was as follows, $40,992.98. Inasmuch as the vessel arrived here after October 1st, when the transfer took place, we feel that the commissions on this cargo should be for our account and not for yours, as we did all of the clerical work, etc., con-

nected with the receiving and delivering of this cargo.

"Regarding freight bookings prior to October 1st for shipment per Baja California or Regulus October/November, will state that there was no cargo contracted from your office excepting your lumber engagements, and [139—117] inasmuch as you booked them at a rate well under other lumber which we have contracted we believe you are not entitled to commissions on same.

"We trust that all matters will be settled in a friendly manner, as we look forward to carrying on business relations with you, connected with your exports to west coast ports.

"Yours very truly,
"A. O. LINDVIG,
"Per B. LINDVIG,
"General Agent."

"BL:D."

On November 8th, 1917, the defendant wrote to plaintiff the following letter (Plaintiff's Exhibit 11):

Plaintiff's Exhibit No. 11.

"November 8, 1917.

"Mr. A. O. Lindvig,
"Kristiania, Norway.

"Dear Sir:

"I have just received your letter of July 18th and contents noted.

"SS. BAJA CALIFORNIA.

"Referring to statement of bookings which you call attention to, would say that these bookings

were engaged before the increase of 25% took effect. In the regular trade it is always, of course, necessary to carry forward all contracts, whether there is an increase or not, in the rate of freight. This matter however has been fully explained to you as I believe you telegraphed regarding same.

"SS. GOVERNOR FORBES."

"Regarding the prices for the supplies for this vessel beg to advise that the men that you have now in your office here, can give you these figures, that you ask for, as they were attending to this matter while employed by me.

"STATEMENT FIRST OF JUNE.

"Regarding this voucher, we have sent you one as far as I remember and it is for attending to contract, making payments and keeping books for this vessel and also for protecting the contract

"Yours very truly,

"CHS:MC." [140—118]

On December 21, 1917, the plaintiff wrote to the defendant as follows:

"C. Henry Smith, Esq.,

"San Francisco.

"Dear Sir:

"Referring to my letter of 14th inst., I beg to state that I have found the following error in going through the account for 'Governor Forbes,' voyage 3:

" '7½% Commission inward freight $38,637.73,' which, of course, is meant to be 5%, and I shall

thank you to pay the difference to my Frisco office, viz, $965.93.

"Yours very truly,

"A. O. LINDVIG." [141—119]

Plaintiff's Exhibit No. 13.

S. S. SINALOA SALVAGE.

			Balance on hand.
			44,541.75
June	28.	Haviside, Withers & Davis	6683.83
	28.	" " "	3316.17
	29.	R. Ramirez, Rec. Clerk	33.75
	30.	Muir & Symon	188.39
	19.	C. Henry Smith, Launch Hire	250.
July	2.	Fife Wilson Lbr. Co.	3000.
	3.	Muir & Symon	1000.
	5.	Parr McCormick S. S. line	26.
	5.	Roberts & Co.	73.32
	5.	Geo. W. Kneass	153.
	5.	Hotel Terminal	12.
	5.	Marshal Newell Sup. Co.	1294.50
	5.	J. R. McGuffick	1.20
	5.	West, Elliott & Gordon	355.10
	5.	Federal Tel. Co.	2.12
	5.	John Fohoney, Auto Hire	2.50
	5.	Marshall Newell Sup. Co.	72.16
	7.	G. W. Price Pump & E. Co.	948.05
	12.	Plant Rubber Sup. Co.	43.71
	12.	Pac. Coast Coal Co.	135.20
	12.	J. R. McGuffick	25.50

	12.	Muir & Symon	1000.
	16.	Capt. C. Bergersen	100.
	17.	Fife Wilson Lbr. Co.	3000.
	23.	Muir & Symon	782.15
	23.	Crowley Launch & T. Co.	4.
	23.	West, Elliott & Gordon	11.
	23.	Fife Wilson Lbr. Co.	1.15
	26.	Capt. Bergerson	200.
			[142—120]
	30.	Wells Fargo & Co.	73.70
	30.	Glendon & Wick	430.
	30.	B. S. Free	100.
	30.	S. F. Bar Pilots	54.22
	30.	Standard Oil Co.	406.65
Aug.	1.	Parr McCormick S. S. Line	750.
	3.	Price Pump Co.	500.
	11.	H. R. Grothman	49.
	14.	Muir & Symon	1000.
	14.	Pac. Stev. & B. Co.	687.93
	14.	Haviside Withers & Davis	10000.
	16.	Coggeshall L. & T. Co.	737.
	16.	Marshall Newell Sup. Co.	356.03
	16.	Henry C. Petersen	2.
	16.	A. Bloom	22.
	16.	J. E. Walstrom	30.
	16.	C. D. Bunker	21.50
	16.	Shipowners & Mcht. T. Co.	150.
	16.	Fyfe Wilson Lumber Co.	300.
	16.	Pac. Tel. & Tel. Co.	13.85
	16.	Consulate of Norway	30.08
	16.	Lloyds Register	75.
	16.	Standard Oil Co.	219.48

	16.	M. A. Taylor.....	449.35
	21.	G. W. Price.....	850.
	24.	Consulate of Norway.....	44.40
	28.	Muir & Symon.....	711.
Sept.	4.	Wedderburn Trad. Co.....	6411.00
	4.	King & Co.....	2.38
	4.	Muir & Symon.....	605.98
	4.	Pac. Stev. & Ballast Co.....	414.47
			[143—121]
	6.	Sterling Laundry	19.80
	6.	Fyfe Wilson	1.13
	6.	Pac. Tel. & Tel. Co.....	15.40
	6.	Geo. Price Pump Co.....	200.
	6.	U. S. Rubber Co.....	22.20
	7.	Haller Cunningham	100.
	7.	Eureka Boiler Wks.....	494.
	7.	Crowley L. & T. Co.....	10.
	12.	Federal Tel. Co.....	1.12
	15.	Haviside Withers & Davis..	8691.60
	19.	A. Erskine	247.
	25.	Capt. Sanners	175.
	25.	Western Union	63.74
	27.	C. B. Harrison	173.32
	27.	Johnson & Higgins.....	242.45
	27.	McNair Hdwe. Co.....	11.77
	27.	Marconi Wireless	1.24
	27.	L. Curtis	25.
	27.	Shipowners & Mchts. T. Co..	50.
	27.	Haviside Withers & Davis..	346.76
Oct.	10.	Pac. Tel. & Tel. Co.....	1.23
			59103.67
			[144—122]

Received in apparent good order and condition from MOHNS COMMERCIAL COMPANY,
Recibido en aparente buena condicion exterior de

on board the Vor steamship called the "Baja California" Master N.O. Rustad or substitute
por embarcar en el vapor capitán ó su representante

C. HENRY SMITH, Inc.

311 California Street

SAN FRANCISCO,

U. S. A.

CABLES: CHENRYINC.

TRADE MARK

FREIGHT—FLETE

Kilos @ ... per 1000 Kilos= ...
" ... " " " =
51,000 lbs. " 2000 lbs. = ...
" ... " " 2240 " =
Primage / Capa } ... 10% =
Cbm @ ... " Cbm = ...
... c. f. =

Marks Marca	Numbers Número	Number of pieces Bultos	Packages Embalo	Contents — Contenido	Gross Weight Peso Ko.	Remarks, Value, etc. Observaciones, Valor, etc.
G & Co. Antofagasta	N/N	500	burlaps	flour		

NON-NEGOTIABLE COPY

Consignees have option to lighter with their own Lighters

FREIGHT PREPAID

to be delivered on deck of the steamer subject to the clauses of this Bill of Lading, at the port of
por entregar sobre cubierta del vapor bajo las condiciones estipuladas en este conocimiento en el puerto de Antofagasta -
unto
á order, Wolfy Gildemeister & Co. or to his or their assigns.
ó á su ó sus mandatorios.
Freight for the said goods as per margin to be paid by shippers at port of loading against delivery of Bills of Lading.
Flete sobre las citadas mercaderías será pagado por los cargadores en el puerto de embarque, contra entrega de los conocimientos.

SPECIAL CONDITIONS.

1. The Company or their agents are at liberty to lighter or to land the goods on the quay, wharf, into lighters, hulk, temporary, depot or lazaretto, at the risk and expense of the receivers or consignees of the goods. Cargo for Callao to be delivered against receipt to the Empresa Muelle y Dársena or to the Custom-House. For such cargo a special surcharge of 5 shillings per freightton is to be paid to the agents of the ship at Callao. The ship is at liberty to commence discharging immediately after arrival at port of destination, and to continue discharging without any interruption at all hours of day and night, also on Sun- and Holidays. All extra-expenses incurred for the steamers quick dispatch to be paid by the consignees of the goods.
2. The responsibility of the owners ceases in all cases, when the cargo leaves the deck of the steamer, for which this Bill of Lading has been signed.
3. If the rate of freight is not charged in accordance with the tariff in force at time of shipment, both shippers and receivers are responsible for the difference, even in case the Bill of Lading states that the freight is prepaid.
The ship is at liberty to seize the cargo for any freight and expenses unpaid.
4. Receivers or consignees of cargo are not allowed to weigh or measure their goods on board the steamer at port of destination.
5. Any claims under this Bill of Lading will not be admitted unless made and properly attested within fourteen days after the discharge of the steamer and presented with the owners or their agents at the port of delivery.
6. The owners of the steamer hereby limit their responsibility for any loss, damage or incomplete delivery for not more than maximum Mk 1000.—for each package or for Mk. 2.—per Cbdem or one kilo, as the freight may be calculated. The responsibility of the owners for all and any claim brought against them is limited in total to the value of the steamer and the freight earned under this voyage.
7. In accepting this Bill of Lading the shipper, receiver and owner of the goods agree to all printed, stamped or written conditions contained herein.

CONDICIONES ESPECIALES.

1. La Compañía, por cuenta y riesgo del recibidor ó consignatario, queda autorizada á descargar y desembarcar la carga del vapor en el muelle y/ó en lanchas, depositos flotantes, provisorios ó lazaretos. Carga destinada al Callao se entregará bajo recibo á la Empresa Muelle y Dársena ó á la Aduana. Por esta carga se cobrará por los agentes del vapor en el Callao un aumento especial de 5 chelines por tonelada. El vapor queda autorizado á empezar la descarga inmediatamente despues de haber, entrado al puerto de destino, siguiendo trabajando sin demora dia y noche, tambien los Domingos y dias de fiesta. Todos los gastos habidos en la pronta descarga del vapor serán por cuenta del recibidor ó consignatario de la mercadería.
2. La responsabilidad de la Compañía, cesa en el momento en que le carga sale de la cubierta del vapor, por el cual se firmó el conocimiento.
3. En caso que el flete no fuera estipulado conforme á la tarifa vijente de la Compañía, tal diferencia se hará valer contra el embarcador ó recibidor, respectivamente el consignatario, aunque los conocimientos indiquen flete pagado adelantado.
El vapor se reserva el derecho de poner embargo sobre la carga por flete y gastos no pagados.
4. No es permitido á los recibidores, de pesar y medir las mercaderías á bordo del vapor en el puerto de destino.
5. Reclamaciones solamente pueden ser consideradas al presentarse ellas con los comprobantes correspondientes á la Compañía ó á sus agentes dentro de los catorce dias siguientes á la descarga del vapor.
6. La Compañía queda unicamente responsable por perdidas, faltas, deterioros ó entrega incompleta hasta mil marcos por cada bulto ó dos marcos por decimetro cubico ó por kilogramo, según el cobro del flete. La compañía en ningun caso responde por mayores perjuicios que por el valor del vapor y flete del viaje correspondiente.
7. El cargador, recibidor y dueño de la carga al aceptar este conocimiento aprueba todas las condiciones impresas y/ó anotadas en este conocimiento.

In witness whereof the master or agent of the said ship has signed three Bills of Lading, all of this tenor and date; the one of which being accomplished, the others to stand void.
En virtud de lo cual el capitán ó el agente del citado buque ha firmado conocimientos de igual tenor y fecha. Siendo uno cumplido los otros quedarán sin efecto.

If required by the shipowner or his agents one of the Bill of Lading to be returned duly receipted in exchange for the goods.
Al exijirlo el armador ó sus agentes, un ejemplar de los conocimientos debe devolverse debidamente cancelado, contra entrega de la mercaderia.

Shipper
Embarcador MOHNS COMMERCIAL COMPANY.

per

Seattle el 31 July 1915

Master or Agent FAWKNER, CURRIE & CO., Inc.

A.C.

General Rules for Steamer Bills of Lading.

(Outwards.)

RULE 1. The shipowner is responsible, so far as no exceptions are laid down in the following rules, for:
1) the ship, when starting on her voyage, being properly fitted out, equipped, manned and provisioned, as well as being put into a seaworthy condition to enable her to accomplish the intended voyage, except for any defects not discoverable by due diligence on the part of the ship owner.
2) Faults of his employees in connection with the proper stowage, custody, handling and delivery of the cargo.

RULE 2. The shipowner is not responsible for damage, injury and loss arising from:
1) the Act of God, perils of the sea, fire, explosions, collisions, strandings, and all other accidents of navigation.
2) enemies, pirates, barratry, pilferage, theft (unless it is proved that such pilferage or theft has been committed by the ship's crew), arrests or restraint of princes, rulers or people, jettison or seizure, fumigation, disinfection, or other sanitary measures of an official character, mutiny, boycott, strikes and lockouts.
3) bursting or exploding of steam boilers or pipes, breaking of shafts or loading and discharging gear and machinery, or any defect whatsoever in the ship, her appurtenances, or in the engines or boilers and their appurtenances (unless it is proved that such defect might have been noticed at the commencement of the voyage in exercising due diligence on the part of the shipowner).
4) vermin, damage done by rats and worms, rust, sweat, decay, shrinkage, breakage, heat, rain, climatic influences, oxidation, or consequences resulting from these causes, damage done on land or damage of any kind brought about by the inherent nature of the goods loaded or by the packing being insufficient, weak or contrary to regulations, or by the address, designation or marking being insufficient and contrary to regulations or by obliteration or disappearance of marks, numbers, addresses or designations of the goods loaded, even if such damage, injury or loss is brought about or increased by illegal acts, negligence, error in judgment or default of the pilot, master, ship's crew or other persons employed by the shipowner in carrying out his obligations. In such cases the parties concerned have to contribute to general average if any.

RULE 3. The shipowner is only responsible for damage, injury and loss caused by deterioration, putrefaction, bending, leakage or the consequences of same or by contact with or evaporation from other goods, if it is proved that such damages, injuries or losses have been caused by default of his employees, according to Rule 1, subsection 2.

RULE 4. The ship is at liberty to sail without pilots, to carry goods of any description, to tow and assist other vessels, and to deviate for saving human life and property.

The ship is at liberty to call at any ports in or out of the usual or advertised routes, in any order, or for any purpose to transship the goods, to forward them to their destination in any other ship or ships, to go into drydock with the goods on board, to store them, as well as to transport them to and from the ship in lighters. In such as well as in other cases the insurance does not in any way concern the shipowner.

RULE 5. The ship is not responsible for gold, silver, precious metals, money, documents, jewelry, works of art, and similar valuables, unless a proper Bill of Lading, containing an explicit declaration of the value, has been signed.

If goods are carried on deck with shipper's consent, the shipper takes all the risk in connection with this, also in respect of the loading, transporting and delivering of live stock, unless it is proved that the damage has been caused by faulty stowing or placing.

RULE 6. Shipper and receiver are liable for all damage, injury and loss caused to the ship, the shipowner, the cargo or persons by acids, inflammable, explosive, strong smelling or otherwise dangerous goods, if such goods have been loaded without any special agreement, and without an exact description as to their nature, no matter whether the shipper was aware of this or not, or whether he acted in his own name or in the name of others. In case the master fears danger from such goods, he may at any time destroy or throw them overboard without being liable for compensation.

RULE 7. Shipper and receiver are liable for all fines or losses which the shipowner, ship, or cargo may incur through non-observance of Custom House regulations or through the importation of the goods being prohibited, or through the marking of the goods, or the designation of the weight, value, or contents of the packages, whether on the packages themselves or in the Bill of Lading, being inexact or not satisfying the demands of the authorities. The shipowner is entitled in cases of incorrect declaration of contents, weights or values of the goods, to claim double the amount of freight which would have been charged correctly, and, for the purpose of ascertaining the actual contents, weight or value of the packages, to demand from the shipper or receiver within one calender year following upon the year of delivery the production of the original invoices of the manufacturer.

RULE 8. If the shipowner has given a receipt for goods which are still lying on the wharf or in lighters, he is only in so far responsible for them as he would be if the goods had already been taken on board and if the employees of those to whom the goods were entrusted would have been in his own service on board. This liability shall, however, not exceed the amount which the shipowner is able to recover from the party to whom he entrusted the goods.

RULE 9. The period after which the liability of the shipowner for the goods shipped on this Bill of Lading expires, and the manner in which the shipowner is to be notified in the case of damage, are fixed by the regulations given on the face of the Bill of Lading.

RULE 10. If on account of quarantine, threatening quarantine, ice, blockade, war, disturbances, strike, lockout, boycott, or reasons of a similar nature, the master is in doubt as to whether he can safely reach the port of destination, there discharge in the usual manner, or proceed thence in safety, unmolested, he is at liberty to discharge the goods at any other place or harbor which he may consider safe, whereby his obligations are fulfilled. Receivers or shippers are liable for all expenses thereby incurred on the goods, and have to be informed if possible.

If the goods for any reason whatsoever cannot be discharged or cannot be found at the port of destination, the ship is at liberty to discharge them on the return voyage, or to forward them by some other means to the port of destination, for ship's account but not at ship's risk.

In the case of Through Goods from and/or to other ports or places the liability of the shipowner is restricted to his own line.

RULE 11. Full freight has to be paid on cargo damaged or diminished by leakage. For any increase in weight owing to sea damage no freight has to be paid.

RULE 12. The master has a lien on all goods for payment of freight, dead-freight, and difference in freight, and for any expenses incurred before or after shipment, including demurrage, cost of repairs, if any, cost for transport to the port of shipment, and forwarding expenses, fines, damages and expenses mentioned in these rules. The ship shall also be entitled to fall back on the shipper for the difference between the total amount owing to the shipowner and the net proceeds of the goods.

RULE 13. When settling claims in respect of loss, damage or incomplete delivery, the value of the goods shall be the cost price of the goods plus freight paid in advance and expenses incurred, but excluding duty, commission and interest. The shipowner is liable for each package or each measurement or weight unit, but not in excess of the amount stipulated on the face of this Bill of Lading. For any loss arising from faulty late or faulty incorrect delivery of the goods, the owner is liable to the extent as mentioned above, provided that such goods are not delivered within three months after arrival of the ship at the port of discharge.

RULE 14. Weight, measure, marks, numbers, quality, contents and value, although mentioned in the Bill of Lading, are to be considered as being unknown to the master unless the contrary has been expressly acknowledged and agreed to. The signing of the Bill of Lading is not to be considered as such an agreement.

RULE 15. General Average is to be adjusted according to York-Antwerp Rules, in shipowner's option at San Francisco or at a port of destination. The master has a lien on the goods for the contributions to General Average. In order to determine the contributions to General Average the receivers have to declare the value of the goods and if required by the master to sign an average bond or render sufficient security or deposit.

RULE 16. Freight payable at port of destination, together with all other amounts specified in Rule 12, is to be paid on delivery of the goods without deduction in cash and in the currency named in the Bill of Lading, or at the option of the receiver in the currency of the country at the highest rate of exchange for banker's sight bills current on the day when the ship is entered in at the custom house.

Freight payable in advance cannot be reclaimed, even if the ship and/or cargo should be lost. In calculating General Average contributions, freight paid in advance has to be added to the value of the goods.

RULE 17. All clauses contrary to the foregoing rules are null and void, unless such a clause has been specially agreed upon.

RULE 18. If differences of opinion should arise as to the interpretation of the foregoing rules, the ——— wording is to be the only conclusive one.

All disputes are to be decided according to ——— Law, and exclusively by the ——— Courts.

Reglas Generales de Conocimientos para Vapores.

(De Salida.)

CLAUSULA 1. Salvo las excepciones estipuladas en las condiciones siguientes, el armador responde:
1. De que el buque antes de hacerse á la mar esté debidamente dispuesto, equipado, tripolado y aprovisionado, así como en estado de navegabilidad y aptitud para llevar á cabo el viaje proyectado, á menos que se trate de deficiencias eventuales de que no se tiene en conocimiento aun poniendo todos los cuidados de un fletador cumplidor de su deber.
2. De las faltas de las personas á su servicio en la conveniente estivadura, custodia, manejo y entrega del cargamento.

CLAUSULA 2. El armador no responde de los daños, perjuicios y pérdidas que se ocasionen:
1. Por fuerzas mayor, peligros de mar, incendios, explosiones, colisiones, varadas y demás accidentes de la navegación.
2. Por actos de enemigos, piratas, barratería, rateria, robo (á no ser que uno y otro se cometan por la tripulación), detenciones ó disposiciones de alta mano, sitio ó destrucción, fumigación. desinfección ó otras medidas sanitarias de carácter oficial, emotinamiento, guerra comercial (boicottage), ruelgas y cierres (lockouts).
3. Por rotura ó esplosion de calderas de vapor ó tuberías, rotura de gorjes ó de los aparejos de carga y descarga ó cualquiera otra avería en el buque ó en sus accesorios (á menos que la causa sea un defecto que podia haberse descubierto antes de la salida del buque poniendo el cuidado de un fletador cumplidor de su deber).
4. Por bichos, insectos, ratones ó otros roedores, apolilladuras, orin, moho, rezumo, descomposición, merma, rotura, calor, lluvia, influencias climatológicas, oxidación ó las consecuencias de estas causas, deterioro en tierra, perjuicios de cualquier clase que puedan resultar de la naturaleza ó vicio propio de las mercancías ó de sus envases defectuosos, frágiles ó ilicitos ó de marcas, direcciones y designaciones insuficientes ó inexactas ó por haberse borrado ó desaparecido las marcas, números, rotulaciones y direcciones de los bultos embarcados, aun en el caso de que á la presentación ó aumento de estos daños, deterioros y pérdidas hayan contribuido actos ilegales, descuido, errores ó faltas del práctico, capitán, tripulantes ó cualquiera otra persona al servicio del armador. En tales casos, al armador tiene derecho á exigir de los interesados las respectivas proretas de la averia gruesa.

CLAUSULA 3. El armador solamente es responsable de los daños, averías y pérdidas que re produzcan por ruina, putrefacción, torcimiento, derrame ó mermas consecuencias y contacto con otros géneros y por sus emanaciones. en el caso de constar que las personas á su servicio hayan faltado contra lo dispuesto en la condición le, párrafo 2º.

CLAUSULA 4. El buque podrá navegar sin práctico, llevar á bordo todo género de mercancías, auxiliar ó remolcar buques, variar su ruta para salvar vidas y bienes.

También es libre el buque tocar puertos dentro ó fuera de su ruta ordinaria ó anunciada en cualquier órden y para cualesquiera fines, trasbordar las mercaderías y reaspedirlas á su punto de destino en cualquier buque ó en otros buques, entrar con la carga en diques, almacenarla y hacerle transportar en lanchas al, ó del buque, así como trasladarla desde el mismo á otra parte en lanchas. En estos casos, como en todos los demás, el seguro de las mercancías no es asunte del armador.

CLAUSULA 5. El buque no responde de la exacta entrega á los consignatarios de oro, plata, metales, preciosos, dinero, documentos, alhajas, obras artísticas y objetos de valor análogos, ceso que de tales efectos no se haya firmado un conocimiento en regla con declaración expresa de su valor.

El cargador corre por su cuenta todos los riesgos de las mercaderías que se conduzcan con autorización sobre cubierta, así como los de la recepción, transporte y entrega de animales vivos, á no ser que los daños se originen por mala estiba ó colocación.

CLAUSULA 6. Los cargadores y rerpiores son responsables de todos los daños, deterioros ó pérdidas que causen al buque, al armador, á la carga ó á las personas por ácidos, productos inflamables, explosivos, mal olientes ó peligrosos, en caso que hayan ródo embercardos sin convenio especial y sin indicar su verdadera naturaleza, lo mismo que el expedidor tenga conomciento ó no de su condicion, como si he obrado en su propio nombre ó en el de otras personas. En caso de temerse algun peligro á causa de tales mercaderías, está facultado para arrojarlos al mar ó destruirlos cuando ó como juzgue conveniente sin obligacion alguna de indemnizar perjuicios.

CLAUSULA 7. Los cargadores y receptores son responsables de todas las multas ó perjuicios que sufran el armador, el buque ó la carga por inobservancia de las ordenanzas de aduana ó por estar prohibida la importación de los artículos, por incacetitud ó insuficiencia de las marcas de los bultos ó en la declaración de peso, valor ó contenido de ellos, tanto en los envases como en los conocimientos y facturas consulares. En caso de declaración inexacta del contenido, peso ó valor de los bultos, el armador tiene derecho á cobrar el doble flete del que les corresponde pagar y puede exigir las facturas originales del fabricante para verificar el contenido, peso y valor verdaderos de los bultos, que el cargador ó el receptor le presenten hasta el fin del año siguente al de la entrega.

CLAUSULA 8. En caso que el armador diere recibo en resguardo de entregas de mercaderías existentes aun en el muelle ó lanchas, su responsabilidad será la que tendría si las hubiera tomado á bordo y los empleados del interesado formaran parte de la tripulación. Sin embargo, la responsabilidad del armador no excederá nunca de la suma de que la persona interpediaria sea responsable ante él.

CLAUSULA 9. El érmino en que cesa la responsabilidad del armador con respecto á las mercancias embarcadas, por este conocimiento, y la forma en que deben hacérsele las reclamaciones, están indicados en las disposiciones que figuran en la cara del conocimiento.

CLAUSULA 10. Si el capitán creyere no poder tocar con seguridad el puerto de su destino ó desembarcar en el las mercancías en la forma acostumbrada á causa de cuarentena ó amenaza de cuarentena ó de que la amenazara cuarentena ó de que la amenaza, ó por motivos de hielo, bloqueo, guerra, disturbios, huelga, cierre (lockout), guerra comercial (boycottage) ó otras causas análoga, esta autorizado para descargar las mercaderías en cualquier otro puerto que considere conveniente, desemharanándose así de todas obligaciones contraidas anteriormente. Los receptores ó cargadores son responsables de todos los gastos que las mercaderías ocasionen por cualquiera de las causas expresadas y, á ser posible, serán avisados del trasbordo ó desembarque.

Si por cualquier circunstancia, los bultos no pudieren desembarcarse ó no se encontraren en el puerto de destino, el buque podrá entregarlos á un regreso ó dirigirlos del modo que estime más oportuno al puerto de destino á su costó, pero no á su riesgo.

Tratandose de bultos en tránsito de ó para otros puertos ó puntos, la responsabilidad del armador se limita á su propia Linea.

CLAUSULA 11. La carga averida ó mermada por derrame esta sujeto á pagar flete integro. Por aumento de peso á causa de averia de mar no se paga flete.

CLAUSULA 12. El capitán tiene el derecho de retener la carga, como prenda pretoria, para asegurarse del cobro de los fletes, falta de fletes y fletes adicionales, de los gastos ocasionados por ella antes y después del desembarque, incluso los de demora, los eventuales de reparación, los de transporte hasta el puerto de embarque y los de reexpedición, de las multas, daños y gastos de que se hace mención en las condiciones precedentes. Igualmente tiene el derecho de hacerse pagar por el cargador la diferencia que resulte entre la suma total que se le debe y el producto liquido de la carga.

CLAUSULA 13. En el arreglo de las reclamaciones por pérdida, averia ó entrega incompleta de la carga, servira de base para la valoración de la misma el precio de costo incluso el flete pagado y los gastos de embarque habidos, pero con exclusión de los derechos de aduana, comisiones é intereses. El armador no responde, por cada bulto, medida ó peso, en ningún caso, de una suma mayor á la consignada en la cara de este conocimiento. Por cualesquiera perjuicios que se ocasionen á causa de entrega retrasada ó defectuosa, el armador responde hasta la suma anteriormente fijada, en caso que no efectúe la entrega á los tres meses de la llegada del buque al puerto de desembarque.

CLAUSULA 14. El peso, medida, marcas, números, clase, contenido y valor se considerarán siempre como desconocidos para el capitán aun cuando estén indicados en el conocimiento, á menos que se haya convenido expresamente lo contrario. Haber firmado el conocimiento no se considerará como tal convenio.

CLAUSULA 15. En los casos de averia gruesa, se hará el arreglo y la liquidación segun las reglas de York-Ambéres en San Francisco é en uno de los puertos de destino, á opción del armador. Para asegurarse del cobro de las cuotas por razón de dicha averia, el capitán se reserva el derecho de retener la carga. Los receptores están obligados, para los efectos de sus contribuciones de le averia gruesa, á indicar el valor de las mercancías y á firmar un documento de obligación ó dar suficiente fianza, á elección del capitán.

CLAUSULA 16. Siendo el flete pagadero en el puerto de destino, deberá satisfacerse juntamente con todas las demás cantidades citadas en el párrafo 12 en el momento de efectuarse la entrega de la carga, sin descuento, en la moneda fijada, en el conocimiento ó, si lo desea el consignatario, en la moneda del país al cambio, más alto del dia de la entrada del vapor en el puerto en cheque bancario de aquella moneda.

Es flete ya pagado de antemano no se devuelve, aun cuando se pierdan el buque y le carga. Para la prorata de la averia gruesa hay que añadir al valor de las mercancías el flete pagado por adelantado.

CLAUSULA 17. Todas las cláusulas que se opongan á las condiciones anteriores son nulas, á menos que no se haya estipulado especialmente otra cosa en contrario.

CLAUSULA 18. De haber disparidad de criterios en la interpretación de las disposiciones precedentes, el texto ——— será el único válido y decisivo.

Todos los litigios se resolveran conforme á las leyes ——— y únicamente por los tribunales de ———

B/L No.

C. HENRY SMITH, INC.,

311 California St. - San Francisco, U. S. A.

LOCAL BILL OF LADING

FROM Seattle TO Antofagasta PER STEAMER "Sinaloa"

SHIPPER Mohns Commercial Company CONSIGNEE Alberto Cabezas & Cia

RECEIVED from Mohns Commercial Company shipment from Seattle ..... by Steamer "Sinaloa" ..... of C. HENRY SMITH, INC., or any other of said Company's Steamers, or Steamers employed by it, the following Merchandise, Marks, Numbers, Articles, Weights and/or Measurements as described below:

A. C. & Co. #1 = 200 cases Salmon

Antofagasta

COPY NOT NEGOTIABLE

all in apparent good order, except where otherwise noted—the rains, weight, quantity, quality, or condition of contents of said packages not being known to the Carriers.

AND WHICH PACKAGES WERE RECEIVED AND ARE TO BE HELD AND CARRIED AND DELIVERED BY THE CARRIERS AND BY EACH SEVERAL SUCCEEDING CARRIER, UPON THE EXPRESS AGREEMENT AND SUBJECT TO ALL THE STIPULATIONS AND CONDITIONS HEREOF AND ON THE REVERSE SIDE HEREOF AND UNDER WHICH FREIGHT RATES ON SAID PACKAGES WERE AGREED TO AND PAID, PROCURED, RECEIVED FOR TRANSPORTATION, AND TO ALL OF WHICH THE SHIPPER HAS AGREED AND HEREBY DOES AGREE, AND EVERY HOLDER HEREOF SHALL BE HELD BOUND THEREBY WHETHER THE SAME BE PRINTED OR WRITTEN.

1. The said packages are to be forwarded with such reasonable dispatch as the general business of the Carriers will permit, by Steamer or Steamers of C. HENRY SMITH, INC., upon and under the same agreement and subject to all of the said Stipulations and Conditions hereon, and ON THE REVERSE SIDE hereof, to the port of destination or so near thereto as safe navigation of such vessel or vessels shall then permit (but with option to the Master of the vessel or vessels to sail without pilots, tow and assist vessels, deviate, and to lighter, save, transship, land and reship said packages or any thereof, and to stop and to load and receive passengers and freight at other ports or places on or off the usual route and in any order), and there, at vessel's tackles, and in like condition to be delivered unto the consignee or his or their assigns or representatives, or if he or they be not on hand to so receive the same, or if said packages be destined beyond said port or place then to any lighterman or wharfinger or to any forwarder or other Carrier for and instead of the said named person, company, assigns, corporation or representatives; and freight at tariff rates (unless otherwise agreed) and all charges advanced by Carriers and average shall be paid in full in.....

on any such delivery, and full freight charges to be so paid on all damaged or unsound packages; and to secure payment of all such charges said packages are hereby pledged to Carrier.

2. Goods in refrigerator. Steamer shall not be accountable for the condition of goods shipped under this Bill of Lading nor for any loss or damage thereto arising from failure or breakdown of machinery, insulation or other appliances nor for detention, nor the consequences of any act, neglect, default or error of judgment of the Masters, Officers, Engineers, Crew or other persons in the service of the Owners, nor for any other cause whatsoever, and steamer shall be at liberty to jettison the whole or any part thereof if considered necessary on account of decomposition.

4. In no event shall Carrier be liable for loss of or damage to any package, after it shall be unhooked from vessel's tackles.

6. It is also understood that if by fire, surf, bad weather or other causes, in the judgment of the commander, the Steamer be prevented from discharging cargo at said port of destination, the Steamer is to have the privilege to store the said goods at Ancon or other port, or retain the same on board the Steamer, at the expense and risk of the owners, until such time as they can be delivered with safety at the place of destination or trans-shipment.

7. All lighterage from Steamer to Steamer and/or between Steamer and shore of goods named in this Bill of Lading, shall be at the risk of owner, shipper or consignee.

8. Glass, crockery, or other articles contained in glass or crockery, or Gunlugs, or any article whatever of a fragile nature, taken only at risk of shipper, owner or consignee.

9. It is mutually agreed, that the liability of any carrier, as to goods destined beyond its own route, shall be terminated by proper delivery by him to the next succeeding carrier.

10. This Bill of Lading shall have the effect of a Special Contract not liable to be modified by a receipt from or any act of an intermediate carrier.

11. It shall be the duty of the Shipper, Consignee, Owner, or his Agent or representative, to examine the said packages BEFORE REMOVAL by him to ascertain whether any part thereof shall be in a damaged condition or shall have been lost or shall be missing or not present for delivery to him; and BEFORE REMOVING any part thereof, he shall make and deliver in writing to the Steamer's Agent, a statement of any claim for any loss of or damage to or the absence of any part of said goods which could have been ascertained by him upon such examination before such removal of said goods, and a failure to make such examination and present such statement, shall be conclusive evidence in favor of the carriers, that all of said packages were delivered in accordance with the conditions of this Bill of Lading and that there was not any loss or damage, or absence of any part of such goods, which, if it had existed, could have been discovered upon making such examination before taking away or removal of said packages.

12. Liability of Carrier shall in no event be greater than that provided by Sections 4281, 4282 and 4283 of the Revised Statutes of the United States of America, and an Act of the Congress of said United States of America, entitled: "An Act relating to navigation of vessels, bills of lading, and certain obligations, duties, and rights in connection with the carriage of property"—the "Harter Act" so called—approved February 13th, 1893, and Carrier shall have all rights and benefits granted to shipowner or carrier by all provisions of all sections of said Revised Statutes and all Acts of the said Congress and all Statutes or laws of any State or place where claim herein may be asserted, limiting or permitting a limitation of a ship-owner's or carrier's liability, together with the benefit of all laws of Mexico or Central American Republics, further limiting or permitting a limitation of such liability.

13. If the owner of the vessel shall have exercised due diligence to make said vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from fault or negligence or error of the pilot, master or crew in the navigation or management of the vessel, or from latent or other defect, or unseaworthiness of the vessel, whether existing at the time of shipment or at the beginning of the voyage, or during the voyage, but not discoverable by due diligence, the consignees or owners of the cargo shall not be exempted from liability for contribution in General Average both to vessel as well as to cargo, or for any special charges incurred, but, with the vessel owner shall contribute in General Average, and shall pay any such special charges as if such danger, damage or disaster had not resulted from such fault, negligence, error, latent or other defects, or unseaworthiness. Passengers' effects. If any, not to contribute in General Average, but claims for passengers' effects ascribed to be allowed in General Average, less than five dollars in each case. General Average payable according to York-Antwerp Rules of 1890, OR OTHERWISE, as CARRIER interested shall elect.

14. The carrier, charterer, agent and/or owner of the vessel shall only be required to exercise due diligence to make the vessel seaworthy at the time of shipment, commencement of the voyage, or on the voyage, and if such due diligence has been used to make the vessel in all respects seaworthy and properly manned, equipped and supplied, neither the vessel, owner, agents, charterers nor the carrier shall become liable or be responsible for damage or loss resulting from unseaworthiness, explosions, bursting of boilers, breakage of shafts, machinery or appurtenances, latent defects in hull, tackle, machinery, boilers, rigging, gear, appurtenances, equipment or appliances, or from any other causes of what kind whatsoever.

15. It is agreed, that if said packages be hereon consigned otherwise than "to Order" or "to Order of Shipper" that this instrument, whether Receipt or Bill of Lading, shall not be negotiable nor carrier required to accept a surrender hereof as a condition of delivery to consignee hereon named; and that when so consigned "to Order" or "to Order of Shipper," and no order of Shipper, as to place of delivery to be notified of arrival shall be given by Shipper and be written hereon. If any of said packages contain dangerous or inflammable or explosive material the shipper and consignee shall each be liable to Carrier for all loss and damages resulting therefrom and Carrier or its Master may destroy such packages without liability therefor.

16. C. Henry Smith, Inc., reserves the right, in the event of any trouble arising between the Company and any of the Central American Republics, to store the cargo at Ancon, and expense of owner, shipper and/or consignee until such time as it may be convenient to carry same forward for delivery.

17. Manifest of goods must be furnished one day before ship's departure. Please impress Steamer in our Mexican ms account of such manifest not being furnished in due time, or errors or omissions therein to be paid by the consignee of goods. The excess of stamped paper and other Custom House charges for loading and delivering goods at port of destination must be paid by the consignee. Shippers will sign this Bill of Lading to each of the two right hand margin.

IN WITNESS WHEREOF, the Agent of said STEAMER hath signed.....two

BILLS OF LADING, one of which Bills of Lading being accomplished the others to stand void. And the Shipper has also signed this Bill of Lading.

Dated at Seattle, Wash. this 25th day of January 19 17

For C. HENRY SMITH, INC.

All of the provisions above and on the REVERSE SIDE of this BILL OF LADING are hereby agreed to on the part of the SHIPPER.

Mohns Commercial Company Shipper.

Read Conditions of Bill of Lading on Reverse Side before Signing.

Shippers must sign in full in ink, or if rubber stamp is used the name of the individual signing on behalf of the Shipper must be in ink.

RATES AND/OR MEASUREMENTS SUBJECT TO CORRECTION

Valued at $.....

FREIGHT RATING AND CHARGES

300 ft ....@

....@

....@

....@

FREIGHT PREPAID

Stipulations and Conditions Referred to on Face Hereof and All of Which are Agreed to by Shipper

19. Carrier shall not be or be held liable for any loss of or from or damage to any of said packages that shall result from any of the following causes, to wit, acts of enemies, pirates, thieves, robbers, arrest or restraint of princes or rulers or people or attachments, acts or takings or claims or restraints of government or municipal or be liable therefor whether acting with or without lawful authority, riots, strikes, stoppage of labor, stoppage in transit or clash of right thereto, fire or water on wharf or land or part or the before loaded on or after unloaded from vessel or cell-pipe of or destruction of or damage to wharf or part or its entering, air of ship owner shall have exercised due diligence to make the vessel on which said packages be shipped in all respects seaworthy and properly manned, equipped and supplied shall Carrier be held for any loss or damage that shall result from a peril from the sea or from any of the following causes, to wit, perils of the sea or other waters, fire on board vessel, barratry of master or mariner, leakage, error of master or crew, racing of passengers, proval or future latent defects, whether existing at time of shipment or at the beginning of the voyage, in or breakage or fracture of or damage to machinery, boilers, shafts, propellers, valves, pipes, machinery or appurtenances or from explosion, bursting of boilers, collision with vessel or other structure, stranding, negligence, default or error in navigation, fault or error in management of vessel or of its engines, winches, boilers, machinery or appurtenances, defective lights, valves, cocks, pipes, tanks and their connections and this whether such fault or error is before or after said time of sailing or at any and all times whether or not such due diligence shall not be presumed, but the same must if claimed or alleged be proven by shipper.

20. Carrier shall not be or be held liable for leakage or wastage of contents of any package nor for breakage of or damage to contents of any package unless shipper at first show that such package was of proper strength and in good condition, and that such contents were properly packed therein and in good order when delivered to carrier and that the package was, while in possession of Carrier, so crushed or broken as to cause such loss or damage. Carrier is not responsible for the loss of or damage to any such contents not specified herein, nor for loss from package or damage to property shipped in liquors, glass, china, earthenware, marble, stone, statuary or any of or in part of glass, crockery, queensware, porcelain, bollowware, pictures, picture frames, stoves or other castings, stone or marble mantels, nor for loss from decay or deterioration of perishable property, stains to packages, contagion or moisture received from such or other freight, effects of shipper, nor for damage to packages by rats, vermin, insulting or bending of metals shipped loose or in bundles, loss or damage resulting from any leakage or explosion of oil, spirits or vapors, nor for damage for want of proper marks or description, or from delay, unless it be first proven by shipper that such loss or damage was caused by the negligence of Carrier, nor for damage by negligence in proper loading, stowage, custody, care or proper delivery of said packages. Each package shall be liable for freight thereon at the rate per hundred pounds as if not so marked a shippers of full number of packages of like supposed contents with car yard to qualify, or actual contents thereof, if greater, and Carrier shall not be liable unless hereunder and if any of said packages shall be delayed or go astray or be else where handled because of insufficient marks or description of the contents thereof, or shall not be liable therefor. Live stock, all perishable property, all live freight, and all property packed in second-hand or used packages, or packed by or at the owner's risk and neither fault nor failure nor improper loading nor bad stowage nor improper custody nor want of due care nor improper delivery of or by Carrier shall be presumed but same must if alleged be proven by shipper.

21. Advance charges shall be prepaid in, and prepaid freight shall be retained by, Carrier whether vessel and cargo be lost or not and whether any or all packages and if all freight and charges due Carrier be not paid after arrival of vessel, Carrier may sell said packages at either public or private sale, and on account of and for account of owner and apply proceeds in payment of freight and all other charges, and if sum so realized be not sufficient to pay same Carrier may collect the balance due and made, the shipper shall, on demand, pay all such charges or make good such deficiency as the case may be, and while such packages are in Carrier's charge or liable for same in his opinion same would become decayed or worthless before it could be delivered as herein provided or if not so sold and any one claiming to be freight thereon and all charges shall be paid by shipper.

22. The said packages built be received by conveyance at vessel a tackle immediately on her arrival at her and place of delivery without regard to weather. If consignee does not on hand to receive same or if delay in receiving same or any part thereof or lighterman or wharfinger or other party or person believed by Carrier to be responsible, and who will take charge of said packages may be selected by Carrier and same be landed on wharf or beach or bank or stored in bulks or put in lighters for the owner and at owner's risk and expense.

23. The person who signed this bill of lading as accepting the terms thereof was such period be the shipper to sign same and if he signed as agent for and by or for any loss of or damage to said packages nor for any damage or loss suffered to or thereon therewith unless such written notice be given to Carrier or its agent at the sole cause of the same and if Carrier become liable for any such damage or loss it shall loss for the subscribed by the shipper. Claims for insurances procured upon said packages. Collectors of customs are hereby authorized to grant a general order for discharge of said packages at port of destination.

24. All claims of shipper or consignee or other party in interest against Carrier or its vessel or the masters thereof for any loss of or damage to or conversion of or misdelivery of or delay in delivering said packages or any part thereof shall be in writing presented to Carrier or its Agent within sixty days from date of notice of any such loss or damage, delay, and arrival of vessel at port of destination or at such other port in distress or carriers nearest mention of loss or stranding of such vessel on course shall each be of no effect unless such claim shall be and by every court be held to be presented within said sixty days, such claim shall be and by every court be held to have been released by shipper and his or their agent from all liability and unless such claim as presented or to premier for any such loss or damage, etc., shall be maintained unless such be so presented and unless thereupon commenced and summons be served on Carrier within sixty days from and after the day and date that such claim be so presented, and if Carrier shall in writing, deny liability for such claim the commencement of such suit the same may be commenced within the time so granted by Carrier shall be and by every court be held to be barred and all claims for loss of or damage to said packages by complaint therein shall be so held to have been released by shipper, owner and consignee, and to be abandoned by them.

25. All liability for loss or damage to goods shall be determined by their invoice cost plus freight. It is expressly stipulated and declared that the value of each package or crate for waste, leakage, breakage, inserror packages, ebfrace to goods in bales, nor for loss or damage from the effects of sea water, decay, heat or other causes, in contact or otherwise when properly stowed; nor for explosion of articles on freight or otherwise, nor from unavoidable delay, nor for loss of profits on any package of the goods named in this Bill of Lading are hereby valued at not exceeding $100.00 per package, and unless a different and higher value is stated in writing herein, the liability of the Commodore therefor, in case of the total loss of all or any of the said goods from any cause, shall not exceed $100.00 per package, and in case of the partial loss of or damage to any of said goods, the liability of the Carriers shall not exceed such proportion thereof per package as the loss or damage on each package shall bear to the sum of $100.00.

26. The shipper hereby represents and declares that the value of each package described on the face of this Bill of Lading does not exceed the sum of $100.00 unless the shipper shall expressly declare and there shall be written on the face hereof a different value and upon such declaration of value the amount of the freight thereon is adjusted.

27. If steamer be disabled on voyage, Carrier may forward said packages to port of delivery by other conveyances at option of its ship master and shall receive additional compensation for such service and consignee shall receive said packages from such vessels or those of strangers; and if salvage services be rendered to shipper or said packages by vessels or vessel or vessels of Carrier, such service shall be as fully paid for as if rendered by strangers.

28. Carrier is not and shall not be required to deliver said packages at port of delivery at any particular time or to meet any particular market or in time for any particular use, and shipper shall not by consignee or other person authorized by carrier at place of delivery to three receive packages as discharged at ship's tackles, and packages may be discharged immediately on arrival of vessel at port or anchorage or wharf or landing.

29. Carrier's vessels are not warranted seaworthy save in so far only as exercise of due care by Carrier in the selection of its agents and employees and the exercise of attention to their duties and their selection and appointment of ship masters and officers and engineers and crew have secured or may secure it.

30. Carrier shall not be liable for any loss of or any damage by fire to any of said goods exclude of being covered by insurance.

31. The shipper shall be liable for any loss or damage to steamer, cargo, lighter or wharf, caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature, whether such shipper be principal or agent; and such goods may be thrown overboard or destroyed at any time without compensation. Extra charges, if any, for discharging, lighterage or other expenses on hazardous goods, declared or considered as such by civil or military authorities, must be borne by the shippers and/or consignees.

32. The steamer shall have a lien on the goods for all freights, primages or charges, and also for all fines or damages which the steamer or cargo may incur or suffer by reason of the illegal, incorrect or insufficient marking, numbering or addressing of packages or description of their contents. Invoices must be made out in accordance with the requirements and regulations of the Port, Customs or Consular authorities. Consular, Board of Health or other certificates required to accompany the goods are to be procured by shippers, and any detention, delay, charges or penalties incurred or occurring in cargo or steamer, owing to the want of such certificates are to be borne by the shippers and/or consignees. Steamer or its owner will not be responsible for delays in the delivery or in the over-carriage of goods not plainly marked with the port of destination, and the name and address of the consignee.

33. It is expressly stipulated that if said package tend to be lightered at any time or place whatsoever all lighterage services rendered shall be and be deemed to have been rendered by an independent carrier or persons of such services be procured by shipper or consignee, and that Carrier's liability as carrier at any port or place whatsoever shall be deemed to have ceased and determined when said packages after unloaded from ship's tackles at such anchorage be at owner's risk.

34. Should, in the opinion of the master, the weather or sea be such as to cause an injurious effect upon the cargo or if the winds or ice prevent the vessel from entering the port or place mentioned, the ship may proceed to her next regular port of call, from whence the owner-carried cargo may be returned at the expense and risk of shipper, owner or consignee. In case the entry of the port of discharge or transhipment or communication thereto should be or become prohibited by the above causes or by reason of any subsequent port, or in case of the master considering the entry of said port or any port from consideration of any of the above causes, or from the want of transhipment of the steamer's intended voyage, the goods may be landed or put into a lazaretto or other convenient place at the risk and expense of the owner hereof, and the master may consider safe, at shipper's risk and expense, and such discharge shall be deemed a full and final delivery and all liability of carrier hereunder shall absolutely cease. In the event of quarantine, the goods may be discharged on any vessel or receptacle necessary or proper for the ship's dispatch, at the consignee's risk and expense, and the master may carry them back to the port of shipment and there land them or transhipm them, and advices mailed to the consignee, if named, but if not named, to the shipper, shall be deemed sufficient notice and a reasonable delivery of said goods under this Bill of Lading, and such goods shall be liable and a lien thereon for all quarantine expenses and charges. If consignee or shipper is also prevented by quarantine from reaching her destination, or making due delivery of the goods, at the port of destination, the goods may be forwarded by carrier at option to shipper, owner or consignee, discharged into docks, lazarettos, hulks, crafts or lighters, at the risk and expense of shipper, owner and consignee, and such discharge shall be deemed a full and final delivery of the goods, all risk, responsibility and liability of carrier hereby ceasing. Carrier to receive freight on original port of shipment to port of delivery shall be also then earned.

35. Carrier's includes stockholders and vessels and masters thereof, "packages" means all property mentioned or referred to on this Bill of Lading, and "owners" mean shipper and all owners of said packages and all pledges thereof other than Carrier, and "Carrier" means the vessel, her owners, masters and agents. Carrier shall not be liable for any loss or damage unless it be shown to have entirely resulted from the negligence of Carrier or wilful default.

36. Carrier's liability hereunder shall be several and shall end and its rights and responsibilities as carrier hereunder immediately after said packages are discharged and if freight be prepaid to carrier beyond said first mentioned place of delivery. Carrier shall not be liable for any agent for payment to other carriers of freight or any part said for other carrier's use, and freight of every carrier of said packages by water shall be due and payable when said packages shall be discharged from such carrier's vessel and when said packages shall be taken over by another carrier's vessel and shall be payable by shipper, owner and consignee, and if said packages be lost or not lost at any stage of entire transit no carrier shall be liable for delay or loss of market or depreciation or loss of interest unless it be shown that same occurred while said packages were in its possession.

37. The rights and liabilities of all carriers by water shall be determined hereby; if Carrier shall accept packages to carry for same and if no bill of lading shall be made as shipper's agent, and not as carrier, and if such delivers be to any carrier by water for transhipment hereby whenever same to be delivered to such carrier shall be evidence of such transfer receipt, shipping receipt, or bill of lading as may be in use for such carrier and by the terms of carrier for like transportation of said packages.

38. Carrier shall have a lien on said property for all dues incurred on it and for all expenses incurred in resisting from shipper's failure to furnish proper Consular or Custom House papers in due time or resulting from other errors or omissions of shipper or its agents and shipper or consignee shall be reimbursed to Carrier by consignee before said property shall be delivered to him.

39. All expense of cooperage and repairs of packages shall be paid by shipper.

40. The Carrier is hereby expressly granted the right and option of delivering the said packages hereinbefore described by this Bill of Lading to lighters, hulks or craft of landing and storing said merchandise either in lighters, hulks or wharf, or in warehouse or storehouse upon the arrival of said vessel at the port of discharge of said merchandise, without notice to and at the expense of consignee, and in the event of its so landing and storing said merchandise the Carrier is thereupon hereby released from all further liability for loss or damage thereafter, whether arising from the acts of Carrier or from any other cause.

41. That merchandise on wharf or in warehouse awaiting shipment, transhipment or delivery, shall be at owner's risk of loss or damage by fire, flood, and/or the giving away or falling or destruction of the wharf or warehouse in which it may be stored; or any structure thereon, not happening through the fault or negligence of Carrier or its representatives, and Carrier shall not be liable for any loss or damage resulting to said goods by fire while upon its vessels, or before loading thereon or after unloading therefrom, unless such fire happens through the fault or negligence of the Carrier.

42. That the owner shall have exercised due diligence to make the steamer in all respects seaworthy, and to have her properly manned, equipped and supplied, it is agreed by shipper, owner and consignee, that if damage or disaster shall happen by or errors in navigation, or in the management of the steamer, or from act, latent defect in hull, machinery or appurtenances, or from any cause whatsoever, either before sailing or at the time of shipment or at the beginning of the voyage (provided the latent defect in hull, machinery or appurtenances was not discoverable by the exercise of due diligence), the owner shall not be liable therefor, but the consignees or owners of the goods shall, severally and not jointly, pay salvage and any general average thereof in the ratio, and shall contribute with the ship owner in general Average to the payment of such sacrifices, losses or expenses of general average as may be made or incurred for the common benefit, or to relieve the adventure from common peril, all with the same force and effect, and to the same extent, as if such danger, damage or disaster had not resulted from or been occasioned by such act or error in navigation or in the management of the vessel, or any latent defect or unseworthiness.

43. Also that in case any steamer of the Carriers under this Bill of Lading be fumigated by the Quarantine Station appointed by the Government, or not be liable for any loss, damage or deterioration resulting from such fumigation.

44. The Carriers shall have a lien upon the goods specified in this Bill of Lading for all arrearages of freight and charges due by the same owners or consignees upon any other goods, and in case of loss, destruction or damage to any goods by the transportation thereof, imposing any liability hereunder, the carrier in whose actual custody they were at the time of such loss, damage, detriment or delay, shall alone be responsible therefor. The receipt of any carrier for the goods shall be prima facie evidence of the condition in which he received them in a suit against any other carrier.

45. In the event of any cargo being accepted and carried with freight charges to collect at destination, and if through insufficiency of containers or any other cause whatsoever, such cargo or any part thereof is refused by the consuming carriers, and the Carrier having such cargo in possession at the time of such refusal is compelled to return the same to the port of origin or otherwise dispose of the same, all freight and other charges and all expense of every nature whatever, that may be reasonably incurring in the rehandling and/or discharge of said cargo, shall be a charge and lien upon and against said cargo, payable by the shipper, owner and/or consignee, prior to taking delivery or effecting reshipment of such cargo.

SOUTH AMERICA PACIFIC LINE

C. HENRY SMITH, INC., Agents

311 CALIFORNIA ST. - SAN FRANCISCO, U. S. A.

S.S. BAJA CALIFORNIA
SINALOA

BILL OF LADING

S.S. REGULUS
GOVERNOR FORBES

S. S. "BAJA CALIFORNIA" Voy.

SHIPPER: Mohns Commercial Company

CONSIGNED TO (Mail Address - Not for purposes of Delivery): H.Herrera

Port of discharge: Antofagasta.
Through rate to:

RECEIVED from Mohns Commercial Company for shipment from Tacoma, Wash. by Steamer Baja California of C. HENRY SMITH, INC., Agents, or any other of said Company's Steamers, or Steamers employed by it, the following Merchandise, Marks, Numbers, Articles, Weights and/or Measurements as follows:

MARKS	NO. PKGS.	DESCRIPTION OF ARTICLES	WEIGHT	CUBIC FEET
H #1. Antofagasta	100	cases Canned Salmon		150
V.B. Mayo 27 1917 Seattle, Wash. Luis A.Santander. Consul de Chile en el Estador de Washington.			Certifico se han gastado las estampillas Consulr L.A.S. Consul.	

all in apparent good order, except when otherwise noted—the value, weight, quantity, quality, or condition of contents of said packages not being known to the Carriers.

Delivery of Lumber to be taken at average rate of
M ft, per day, and general cargo at average rate of not less than 500 tons per day or when less than 500 tons delivery to be taken on day of arrival, Sundays and holidays only excepted, failing which demurrage is to be paid at the rate of $150.00 U. S. Gold per running day for S. S. REGULUS and $750.00 per running day for other steamers.

Should the steamer be fumigated by the Clayton apparatus or otherwise any damage resulting by such fumigation to goods shipped will not be accounted for by the owners or agents of the steamers of this line.

1. WHICH PACKAGES WERE RECEIVED AND ARE TO BE HELD AND CARRIED AND DELIVERED BY THE CARRIERS AND BY EACH SEVERAL BUCCKEDING CARRIERS, UPON THE EXPRESS AGREEMENT AND SUBJECT TO ALL THE STIPULATIONS AND CONDITIONS HEREON AND ON THE REVERSE SIDE HEREOF AND UNDER WHICH FREIGHT RATES ON SAID PACKAGES WERE ADJUSTED AND SAID PACKAGES RECEIVED FOR TRANSPORTATION, AND TO ALL OF WHICH THE SHIPPER HAS ASSENTED AND HEREBY DOES AGREE, AND EVERY HOLDER HEREOF SHALL BE HELD BOUND THEREBY WHETHER THE SAME BE PRINTED OR WRITTEN.

2. The said packages are to be forwarded with such reasonable dispatch as the general business of the Carriers will permit, by Steamer or Steamers of C. HENRY SMITH, INC., Agents, upon and under the same agreement and subject to all of the said Stipulations and Conditions hereon, and ON THE REVERSE SIDE hereof, to the port of destination or so near thereto as safe navigation of such vessel or vessels shall then permit (but with option to the Master of the vessel or vessels to sail without pilots, tow and assist vessels, deviate, and to lighter, surf, transship, land and reship said packages or any thereof, and to stop and to lend and receive passengers and freights at other ports or places on or off the usual route and in any order), and there, at vessel's tackles, and in like condition to be delivered onto the consignee or his or their assigns or representatives, or if he or they be not on hand to so receive the same, or if said packages be destined beyond said port or place then to any lighterman or wharfinger or to any forwarder or other representatives, and freight at tariff rates (unless otherwise agreed) and all charges advanced by Carriers and average shall be paid in full in U. S. Gold Coin on any such delivery, and full freight charges to be so paid on all damaged or unsound packages; and to secure payment of all such charges said packages are hereby pledged to Carrier.

3. Goods in refrigerator Steamer shall not be accountable for the condition of goods shipped under this Bill of Lading nor for any loss or damage thereto arising from failure or breakdown of machinery, insulation or other appliances nor for detention, nor for the consequences of any act, neglect, default or error of judgment of the Master, Officers, Engineers, Crew or other persons in the service of the Owners, nor for any other cause whatsoever, and steamer shall be at liberty to jettison the whole or any part thereof if considered necessary on account of deterioration.

4. In no event shall Carrier be liable for loss of or damage to any package, after it shall be unlooked from vessel's tackles.

5. It is also understood that if by fog, surf, bad weather or other causes, in the judgment of the commander, the Steamer be prevented from discharging cargo at said port of destination, the Steamer is to have the privilege to store the said goods at Ancon or any other port, or retain the same on board the Steamer, at the expense and risk of the owners, until such time as they can be delivered with safety at the place of destination or trans-shipment.

6. Freight payable in advance, in United States of America Gold Coin, at the rate as per margin, together with all charges incurred for storage, and other necessary expenses at port of delivery. Freight is payable on weight or measurement received or delivered, at Carrier's option.

7. All lighterage from Steamer to Steamer and/or between Steamer and shore of goods named in this Bill of Lading, shall be at the risk of owner, shipper or consignee.

8. Glass, crockery, or other articles contained in glass or crockery, or Castings, or any article whatever of a fragile nature, taken only at risk of shipper, owner or consignee.

9. It is mutually agreed, that the liability of any carrier, as to goods destined beyond its own route, shall be terminated by proper delivery by him to the next succeeding carrier.

10. This Bill of Lading shall have the effect of a Special Contract not liable to be modified by a receipt from or any act of an intermediate carrier.

11. It shall be the duty of the Shipper, Consignee, or his Agent or representative, to examine the said packages BEFORE REMOVAL by him to ascertain whether any part thereof shall be in a damaged condition or shall have been lost or shall be missing or not present for delivery to him; and BEFORE REMOVING any part thereof, he shall make and deliver in writing to the Steamer's Agent, a statement of any claim for any loss of or damage to or the absence of any part of said goods which would have been ascertained by him upon such examination before such removal of said goods; and a failure to make such examination and present such statement, shall be conclusive evidence in favor of the carrier that all of said packages were delivered in accordance with the conditions of this Bill of Lading and that there was not any loss or damage or absence of any part of such goods, which, if it had existed, would have been discovered upon making such examination before taking away or removal of said packages.

12. Liability of Carrier shall in no event be greater than that provided by Sections 4281, 4282 and 4283 of the Revised Statutes of the United States of America, and the Act of the Congress of said United States of America, entitled: "An Act relating to navigation of vessels, bills of lading, and certain obligations, duties, and rights in connection with the carriage of property"—the "Harter Act"—so-called—approved February 13th, 1893, and Carrier shall have all rights and benefits granted to ship owner or carrier by all provisions of all sections of said Revised Statutes and all Acts of the said Congress and all Statutes of laws of any State or place where claim hereon may be asserted, limiting or permitting a limitation of a ship-owner's or carrier's liability, together with the benefit of all laws of Mexico or General American Republics, further limiting or permitting a limitation of such liability.

13. If the owner of the vessel shall have exercised due diligence to make said vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from fault or negligence or error of judgment of master or crew in the navigation or management of the vessel, or from latent or other defect, or unseaworthiness of the vessel, whether existing at the time of the shipment or at the beginning of the voyage or any voyage, but not discoverable by due diligence, the consignees or owners of the cargo shall not be exempted from liability for contribution in General Average both to vessel as well as to cargo, or for any special charges incurred, but, with the vessel owner shall contribute in General Average, and shall pay any such special charges as if such danger, damage or disaster had not resulted from such fault, negligence, error, latent or other defects, or unseaworthiness. Passengers' effects, if any, not to contribute in General Average, but claims for passengers' effects sacrificed to be allowed in General Average, less their proper contribution in such case. General Average payable according to York-Antwerp Rules of 1890, OR OTHERWISE, as CARRIER intended shall elect.

14. The owner, charterer, agent and/or master of the vessel shall only be required to exercise due diligence to make the vessel seaworthy at the time of shipment, commencement of the voyage, or on the voyage, and if such due diligence has been used to make the vessel in all respects seaworthy and properly manned, equipped and supplied, neither the vessel, owner, agents, charterers nor master shall become or be held responsible for damage or loss resulting from unseaworthiness, explosions, bursting of boilers, breakage of shafts, machinery or appurtenances, latent defects in the hull, machinery, boilers, rigging, gear, appurtenances, equipment or appliances, or from any other cause of what kind whatsoever.

IN WITNESS WHEREOF, the Agent of said STEAMER hath signed ..... TWO ..... BILLS OF LADING, one of which Bills of Lading being accomplished the others to stand void. And the Shipper has also signed this Bill of Lading.

Dated at Tacoma this 23 day of May -1917

For C. HENRY SMITH, INC., Agents.

All of the provisions above and on the REVERSE SIDE of this BILL OF LADING are hereby agreed to on the part of the SHIPPER.

Mohns Commercial Company
per A.Kaltenbach. Shipper.

Read Conditions of Special Contract on the Reverse Side Before Signing.

Shippers must sign in full in ink, or if rubber stamp is used the name of the individual signing on behalf of the Shipper must be in ink.

FREIGHT

150	CU. FT. AT 2/6	PER TON	60.—
	CU. FT. AT	PER TON	
	LBS. AT	PER 2000	
	LBS. AT	PER 2000	
	BD. FT. AT	PER 1000	
	AT		
		Freight	$
Wharfage & handling			$ 2.81
		Total	

SINALOA 7/8/17 - via San Francisco

SINALOA July 3 8/17 - via San Francisco

Stipulations and Conditions Referred to on Face Hereof and All of which are Agreed to by Shipper

No. 12824
U. S. DIST. COURT
NOR. DIST. CALIF.
FILED
Clerk

16. It is agreed, that if said packages be hereon consigned otherwise than "to Order" or "to Order of Shipper" that this instrument, whether Receipt or Bill of Lading, shall not be negotiable nor carrier required to secure a surrender hereof as a condition of delivery to consignee hereon named; and that when so consigned "to Order" or "to Order of Shipper," the name of the party at place of delivery to be notified of arrival shall be given by Shipper and be written hereon. If any of said packages contain dangerous or inflammable or explosive material the shipper and consignee assume such be liable to Carrier for all loss and damage resulting therefrom and Carrier or its ship master may destroy any such package without liability therefor.

18. G. Henry Smith, Inc., reserves the right, in the event of any trouble arising between the Company and any of the Central American Republics, to store the cargo at the risk and expense of owner, shipper and/or consignee until such time as it may be unwise to carry same forward for delivery.

17. Manifest of goods must be furnished one day before ship's departure. Fines imposed on masters in any Mexican port, on account of such manifest not being furnished in due time, or errors or omissions therein to be paid by the consignee of goods. The expense of stamped paper and other Customs House charges for landing and delivering goods at port of destination must be paid by the consignee thereof. Shippers will sign this Bill of Lading as such in the under right hand margin.

19. Carrier shall not be or be held liable for any loss of or from or damage to any of said packages that shall result from any of the following causes, to-wit, acts of enemies, arrest, thieves, riots, arrest or interdiction of rulers or people, seizure under attachments, acts, or takings, or claims or restraints of government or municipal or de facto officers whether acting with or without lawful authority, riots, strikes, stop page of labor, stoppages in transit or claim of right thereto, fire or water on wharf or land or after fire before loaded on or after unloaded from vessel, or collapse of or destruction of or damages to wharf or pier or its coverings, nor if ship owner shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied and shall Carrier be liable for any loss or damage that shall result in whole or in part from any or all of the following causes, to-wit, perils of the sea or other waters, fire on board vessel, barratry of master or crew, larceny of master or crew, piracy of passengers, present or future latent defects, whether existing at time of shipment or at the beginning of the voyage, or in or breakage or stoppage of boilers, machinery, shafting, fittings or valves, pipes, machinery or appurtenances or from explosion, bursting of boilers, collision with vessel or other structure, obstacle, stranding, accident of navigation, fault or error in navigation of vessel, fault or error in management of vessel or of its master, winches, hatches, ropes, chains, slings, falling overboard, valves, cocks, pipes, tanks and their connections and this whether such fault or error be before or after sailing or be by the act, neglect or default of the master, crew or pilot, due diligence shall not be presumed, but the same must if claimed or alleged be proved by shipper.

20. Carrier shall not be or be held liable for leakage or wastage of contents of any package nor for breakage of or damage to any package or its contents unless shipper first show the such package was of proper strength and in good condition, and that such contents were properly packed therein and in good order when delivered to Carrier and that the package was, while in possession of Carrier, so crushed or broken as to cause such loss or damage; and shall not be liable for loss of or damage to any such contents not specified herein, nor for loss from packages or damage to property arising from its tarnish, erosion, rust, decay, evaporation, dryness, wetness, sweat, vermin, twisting or bending of metals shipped loose or in bundles, loss or damage resulting from any bursting or explosion of packages from improper packing or from improper marks or description, or from delay, unless it be first proven by shipper that such loss or damage was caused by gross negligence of Carrier and not by any of the failure in proper loading, stowage, custody, care of proper delivery of said packages. Each package shall be by shipper legibly marked with its number and consignee's name if not so marked a delivery of full number of packages of like supposed contents with out regard to quality or value of contents shall be a full discharge of Carrier's obligations hereunder and if any of said packages shall be delayed or go astray or be elsewhere landed because not properly marked or addressed, Carrier shall not be liable therefor. Live stock, all perishable property, all live freight, and all property carried in unventilated spaces shall be carried only at the risk of the owner's risk; and neither fault nor failure nor improper loading nor bad stowage nor improper custody nor want of due care on the delivery of or by Carrier shall be presumed but same must if alleged be proven by shipper.

21. Advance charges shall be repaid to, and prepaid freight shall be retained by, Carrier whether vessel or property be lost or not and at any place of entry thereof, and if all freight and charges due Carrier be not paid after arrival of vessel, Carrier may sell said packages at public or private sale, without an agent for and for account of owner and apply proceeds in payment of freight and all other charges, and if same so realized be not sufficient to pay the same in full, then a lien is hereby made, the shipper shall, on demand, pay all such charges or make good such deficiency as the case may be, and Carrier shall not be liable for loss of or damage to perishable property when in his opinion same would become decayed or worthless before it could be delivered as herein provided, and in no case shall Carrier be liable for any freight thereon and all charges shall be paid by shipper.

22. The said packages shall be received by consignee at vessel's tackle immediately on her arrival at her said place of delivery without regard to weather; if consignee be not on hand to so receive packages or refuse to receive same, they may be sent to lighterman or wharfinger or other party or person believed by Carrier to be responsible and he will take charge of said packages at the risk and expense of owner and be landed on wharf or beach or bank or stored in bulks or put in lighters for the owner and at owner's risk and expense.

23. The person who signed this bill of lading as accepting the terms thereof was authorized by the shipper to sign same for the shipper. Carrier shall never be liable for any loss of or damage to said packages, or any of them, or for delay, unless in connection therewith notice in negligence or wilful default be shown to have been the sole cause of the same; and if Carrier be negligent, then in no event shall such loss it shall upon facts be subrogated to and have the benefit of all insurance procured upon said packages. Collection of insurance shall be made promptly and as general order for discharge immediately ship be ordered at custom house.

24. All claims of shipper or consignee or other party in interest against Carrier or its vessels or the masters thereof for any loss of or damage to or conversion of or misdelivery of or delay in delivery of said packages or any of them, or for any thing presented to Carrier or its Agent within sixty days from date of notice of any such loss, damage, etc., and if not so presented and if suit with respect thereto be not begun in distress or attempt unwrapper mention of loss or strending of such vessel on voyage shall be and fix the date of delivery, and suit be brought, within six months after presented within said sixty days, such claim shall be and by every court be held to have been released by shipper and by consignee, and Carrier shall not be liable for such claim so presented or to recover for any such loss or damage, etc., shall be maintainable unless such claim be presented and such suit be brought, summoned and summoned be served on Carrier within sixty days from and after the day and date when such claim be so presented, and if Carrier shall offer security for costs and grant further time for the commencement of such suit the same may be commenced within the time so granted therefor. Delivery of said packages to consignee at the said sixty days or within such further time so granted by Carrier shall be and by every court be held to be before the time of the commencement of any suit thereafter by complaint therein shall be so held to have been released by shipper, owner and consignee, and to be abandoned and lost.

25. All liability for loss or damage to goods shall be determined by their invoice cost at shipment. It is expressly understood that the Company does not hold itself accountable for waste, leakage, breakage, insecure packages, chafage to goods in bales, nor for loss or damage from effects of climate, or from delays, unless the same shall be contrary or otherwise when properly stowed; nor for explosion of articles on freight or otherwise nor from unavoidable accidents, and that the expressed value placed on the goods named in this Bill of Lading are hereby valued at not exceeding $100.00 per package, and unless a different value is expressed herein, and a higher rate thereto, the liability of the Companies therefor, in case of the total loss of all or any of said goods from any cause whatsoever, and in case of damage to same, in case of the partial loss of or damage to any of said goods, the liability of the Carriers shall not exceed such proportion thereof the package of the loss or damage in each package shall bear to the sum of $100.00.

26. The shipper hereby represents and declares that the value of each package described on the face of this Bill of Lading does not exceed the sum of $100.00 unless the shipper shall expressly declare and there shall be written on the face hereof a different value, and agrees that the declaration of value shall be the basis of freight thereon is adjusted.

27. Freight to be disabled on voyage. Carrier may forward said packages to port of delivery by other conveyances at option of its ship master and shall receive additional compensation for such service. Shipper shall pay whether goods arrive by own vessels or those of strangers; and if salvage services be rendered to shipper or said goods by servants or vessel of Carrier such salvage service shall be as fully paid for as if rendered by strangers.

28. Carrier is not and shall not be required to deliver said packages at port of delivery at any particular time or to meet any particular market or in time for any particular sale; and shipper shall notify consignee or other person for forwarder or carrier at place of delivery to there receive package as discharged at ship's tackle, and packages may be discharged immediately on arrival of vessel at port or anchorage or wharf or landing.

29. Carrier's vessels are not warranted accurately save in regard to the navigation of the same by Carrier in the selection of its agents and superintendence and liable attention to their duties and their selection and appointment of ship masters and officers and engineers and ever have secured or may secure it.

30. Carrier shall not be liable for any loss of or any damage by fire to any of said goods capable of being covered by insurance.

31. The shipper shall be liable for any loss or damages to steamer, cargo, lighter or wharf, caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature. Whether such shipper be principal or agent; and such goods may be thrown overboard or destroyed at any time without compensation. Extra charges, if any, for discharging, lighterage or other expenses on hazardous goods, declared or considered as such by civil or military authorities, must be borne by shippers and consignees.

32. The steamer shall have a lien on the goods for all freight, primages or charges, and also for all fines or damages which the steamer or cargo may incur or suffer by reason of the illegal, incorrect or insufficient marking, numbering or addressing of packages or description of their contents. Invoices must be made out in accordance with the prescriptions and regulations of the Port, Customs or Consular authorities. Consular, Custom House, Health or other certificates required to accompany the goods are to be produced by shippers, and any detention, delay, charges or penalties incurred or occurring by master or steamer, owing to the want of such certificates, are to be borne by the shippers and/or consignees. Steamer or its owner will not be responsible for delay in the delivery or in the non-carriage of goods not plainly marked with the port of destination, and the name and address of the consignee.

33. It is expressly stipulated that if said packages need to be lightered at any port of discharge, all lighterage services rendered shall be and be deemed to have been rendered by an independent carrier or person; if such services be procured by Carrier they shall be deemed to be and to have been so procured by it acting as agent therefor of shipper, and Carrier's liability as carrier at any port or place where such lighterage be needed, shall and immediately cease as aforesaid at or near to said port or place. Carrier's liability after steamer be at anchor at or near to said port of delivery shall be only and solely, and said packages after unhooked from ship's tackles at such anchorage be at owner's risk.

34. Should, in the opinion of the master, the weather or sea be such as to cause an unusual delay in the discharge of the whole or any part of the goods herein mentioned, the ship may proceed to her or their destination port or not call, from whence the cargo carried cargo be returned at the expense and risk of shipper, owner or consignee, to the original port of discharge or transportation or communication therewith rendering or being liable to render the vessel liable to quarantine at any port, whether she has or has not been boarded by a sanitary or other officer of such port, either from epidemic or otherwise, unsafe or injurious to the further prosecution of the voyage contemplated, the goods may be landed or put into a lazaretto, bulk, lighter or other receptacle therefor, at such or any other port, and the master may proceed to his destination port, and such discharge shall be proper, final delivery and all liability of the carrier or ship owner thereunder shall cease. In the event of quarantine, the goods may be discharged on arrival at port of delivery or transshipment into quarantine, dock, bulk, lighter, or other receptacle, or remain on board the ship's dispatch, at the consignee's risk and expense, or the master may carry the goods to the nearest convenient port or place and there discharge them and deliver mailed to the consignee, if named, otherwise to shippers, shall be deemed, under the circumstances a due and proper delivery of the goods hereunder, and such goods shall be liable and a lien thereon be held for all quarantine expenses incurred or charged against the goods, or is detained at quarantine, the goods may be discharged into quarantine and there remain at the expense charged into depots, lazarettos, hulks, crafts or lighters, at the risk and expense of shipper, owner and consignee, and all and any of the goods therefor, but shall be deemed a full and final delivery of the goods, all risk, responsibility and expenses of the Carrier and ship owner, bailee or others, and the goods shall be and are delivered from the ship's tackle, and all expenses thereby or thereafter incurred are and all increased cost of insurance shall be paid by shipper, owner and consignee, all and any of them, the Carrier retaining a lien on the goods therefor; but such delivery shall be completed, or the discharge impracticable, or so in the master's opinion, the Carrier may forthwith without present discharge proceed to the nearest safe port, or at the ship's option to the nearest port to which the ship is bound, at the risk and expense of shipper, owner and consignee, and there discharge and land the goods, and all at the risk and expense of shipper, owner and consignee, and all and any of them, and such paying freight from the original port of discharge and the Carrier retaining a lien on the goods therefor and for all costs, charges and expenses incurred, and for all increased cost of insurance. Carrier's responsibility as to the custody of shipment to port of delivery shall be also then earned.

35. Carrier's stockholders and vessels and masters thereof; "packages" means all property mentioned or referred to on face hereof; "shippers" and "owners" mean and include shippers of said packages and all parties claiming other than Carrier. "Owner's risk" and "O. R." mean that shippers have agreed that Carrier shall not be liable for any loss or damage unless it shall be proved to have resulted from its negligence or wilful default.

36. Carrier's liability hereunder shall be several and shall end and its rights dependent on delivery occur immediately it has made delivery as above provided; and it shall not be responsible for cargo burned and dirt caused by delivery. Carrier shall be shipper's agent for payment to other carriers of such freight as may be due to them, and shipper agrees to pay same and to pay freight on said packages by water other than C. Henry Smith, Inc., shall, at option of said carrier, be deemed earned when said packages shall be laden on board other carrier's vessel and shall be payable by shipper whether such other carrier's vessel or said packages be lost or not lost, and in case of casualty—no carrier shall be liable for delay or misdelivery or conversion or loss or damage unless it be proved that the negligence be sole and packages were in its possession.

37. The rights and liabilities of carriers by water shall be determined herby; if Carrier deliver said packages to other carrier for carriage, such delivery shall be for shipper's account, and not as carrier, and Carrier shall not be liable for carriage by land, or by water, shipper agrees to be bound by the stipulations and conditions of the bill of lading issued by such other carrier as may be in use for such transfer or by such carrier for like transfer or carriage at place of such transfer.

38. Steamer shall have a lien on said property and on proceeds thereof and for all expense to it resulting from shipper's failure to furnish proper Consular or Custom House papers in due time or from shipper's error or misstatement of shipment and all such fines and expenses shall be reimbursed to Carrier by consignees before said property shall be delivered to him.

39. All expense of cooperage and repairs of packages shall be paid by shipper.

40. The Carrier is hereby expressly granted the right and option of delivering the goods herein mentioned by this Bill of Lading by transhipment, lighterage, or of landing and storing said merchandise either in lighters, hulks or wharf, or in warehouse awaiting shipment, or of transhipping same by other vessels as may be in case of said merchandise, without notice to and at the expense of consignee; and to the same effect of landing and storing said merchandise, the responsibility hereby released from all further liability for loss or damage thereafter, whether arising from the act of negligence of Carrier.

41. That merchandise on wharf or in warehouse awaiting shipment, transhipment or delivery shall be at owner's risk of loss or damage from fire, theft, or leaving away or failing or destruction in whole or in part of the warehouse or the wharf; that consignee shall receive said merchandise from time to time as the arrival of shipment and all such fines and expenses shall be reimbursed to Carrier by consignees before said property shall be delivered to him.

39. All expense of cooperage and repairs of packages shall be paid by shipper.

40. The Carrier is hereby expressly granted the right and option of delivering the goods herein mentioned by this Bill of Lading by transhipment, lighterage, or of landing and storing said merchandise either in lighters, hulks or wharf, or in warehouse awaiting shipment, or of transhipping same by other vessels as may be in case of said merchandise, without notice to and at the expense of consignee; and to the same effect of landing and storing said merchandise, the responsibility hereby released from all further liability for loss or damage thereafter, whether arising from the act of negligence of Carrier.

41. That merchandise on wharf or in warehouse awaiting shipment, transhipment or delivery shall be at owner's risk of loss or damage from fire, theft, or leaving away or failing or destruction in whole or in part of the warehouse or the wharf; that consignee shall receive said merchandise from time to time as the arrival of shipment and all such fines and expenses shall be reimbursed to Carrier by consignees before said property shall be delivered to him.

42. If the owner shall have exercised due diligence to make the steamer in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that, in case of danger, damage or disaster resulting from fault or error in navigation or in the management of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or in her engines or boilers, existing at the time of the beginning of the voyage (provided the latent defect or unseaworthiness was not discoverable by the exercise of due diligence), or from any other cause of whatsoever kind therefor, but the consignees or owners of the cargo shall, nevertheless, pay salvage, and also pay such proportion of general average as may be made upon them by the ship owner in General Average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit, or to relieve the adventure from any common peril, as if the said loss arose and effect in the cause of any such fault, danger, damage or disaster had not resulted from or been occasioned by faults of the master, mariners or other persons in the service of the ship owner or his servants or ownerwithstanding.

43. A lien is ceas any steamer of the Carriers under this Bill of Lading be damaged by the Clayton apparatus or otherwise, the ship owner shall not be liable for any loss of or consequential damage resulting from such damage.

44. The several carriers shall have a lien upon the goods specified in this Bill of Lading for charges of freight and charges of all kinds which may accrue thereon on other goods. In case of loss, detriment or damage to the goods, or delay in the transportation, whether arising from negligence hereof, the carrier to whose actual custody they were at the time of such loss, damage, detriment or delay, shall alone be responsible therefor. The receipt of any carrier for the goods shall be prima facie evidence of the condition in which he received them in a suit against any other carrier.

44. In the event of any cargo being accepted and carried with freight charges to collect at destination, and if through insufficiency of containers or any other cause whatsoever, such cargo or any part thereof is refused by the consecting carriers, and the Carrier having such cargo in possession at the time of such refusal is compelled to return the same to the port of origin or otherwise dispose of the same, all freight and other charges and all expense of every nature whatever, that may be reasonably incurred by the Carrier in forwarding and/or discharge of such cargo shall be paid upon and against said cargo, payable by the shipper, owner and/or consignee, prior to taking delivery or effecting reshipment of such cargo.

B/L No. 2

ON DEL

SOUTH AMERICA PACIFIC LINE

C. HENRY SMITH, INC., AGENTS

311 CALIFORNIA ST. - SAN FRANCISCO, U. S. A.

S. S. BAJA CALIFORNIA
SINALOA

S. S. REGULUS
GOVERNOR FORBES

BILL OF LADING

S. S. "REGULUS" Voy. 2

SHIPPED C. Henry Smith
San Francisco, Calif.

CONSIGNED TO (Mail Address - Not for purposes of Delivery)
Andes Exploration Co.
Valparaiso, Chile,

Port of discharge
Through rate to } Valparaiso, Chile,

RECEIVED from C. Henry Smith for shipment from Port Ludlow, Wash. by Steamer "Regulus" of C. HENRY SMITH, INC., Agents, or any other of said Company's Steamers, or Steamers employed by it, the following Merchandise, Marks, Numbers, Articles, Weights and/or Measurements as follows:

MARKS	NO. PKGS.	DESCRIPTION OF ARTICLES	WEIGHT	CUBIC FEET
A E CO	554	Five Hundred Fifty-four Pieces containing Sixty Thousand, Five Hundred Eighteen (60,518) Feet Board Measure.		

COPY
NON-NEGOTIABLE

all in apparent good order, except where otherwise noted—the value, weight, quantity, quality, or condition of contents of said packages not being known to the Carriers.

Delivery of Lumber to be taken at average rate of .....
M ft. per day, and general cargo at average rate of not less than 500 tons per day or when less than 500 tons delivery to be taken on day of arrival, Sunday and holidays only excepted, failing which demurrage is to be paid at the rate of $1500.00 U. S. Gold per running day for S. S. REGULUS and $750.00 per running day for other steamers.

Should the steamer be fumigated by the Clayton apparatus or otherwise any damage resulting by such fumigation to goods shipped will not be accounted for by the owners or agents of the steamers of this line.

1. WHICH PACKAGES WERE RECEIVED AND ARE TO BE HELD AND CARRIED AND DELIVERED BY THE CARRIERS AND BY EACH SEVERAL SUCCEEDING CARRIER, UPON THE EXPRESS AGREEMENT AND SUBJECT TO ALL THE STIPULATIONS AND CONDITIONS HEREON AND ON THE REVERSE SIDE HEREOF AND UNDER WHICH FREIGHT RATES ON SAID PACKAGES WERE ADJUSTED AND SAID PACKAGES RECEIVED FOR TRANSPORTATION, AND TO ALL OF WHICH THE SHIPPER HAS AGREED AND HEREBY DOES AGREE, AND EVERY HOLDER HEREOF SHALL BE HELD BOUND THEREBY WHETHER THE SAME BE PRINTED OR WRITTEN.

2. The said packages are to be forwarded with such reasonable dispatch as the general business of the Carriers will permit, by Steamer or Steamers of C. HENRY SMITH, INC., Agents, upon and under the same agreement and subject to all of the said Stipulations and Conditions hereon, and ON THE REVERSE SIDE hereof, to the port of destination or so near thereto as safe navigation of such vessel or vessels shall then permit (but with option to the Master of the vessel or vessels to sail without pilots, tow and assist vessels, deviate, and to lighter, surf, transship, land and reship said packages at any thereof, and to stop and to land and receive passengers and freight at other ports or places on or off the usual route and in any order), and there, at vessel's risk and expense, to be delivered unto the consignee or his or their assigns or representatives, or if he or they be not on hand to so receive the same, or if said packages be destined beyond said port or place then to any lighterman or wharfinger or to any forwarder or other Carrier for and instead of the said named person, company, assigns, corporation or representatives; and freight at tariff rates (unless otherwise agreed) and all charges advanced by Carriers and average shall be paid in full in U. S. Gold Coin on any such delivery, and full freight charges to be so paid on all damaged or unsound packages; and to secure payment of all such charges said packages are hereby pledged to Carrier.

3. Goods in refrigerator. Steamer shall not be accountable for the condition of goods shipped under this Bill of Lading nor for any loss or dam...ge thereto arising from failure or breakdown of machinery, insulation or other appliances nor for detention nor for the consequence of any default, default or error of judgment of the Master, Officers, Engineers, Crew or other persons in the service of the Owners, nor for any other cause whatsoever, and steamer shall be at liberty to jettison the whole or any part thereof if considered necessary on account of decomposition.

4. In no event shall Carrier be liable for loss of or damage to any package, after it shall be unhooked from vessel's tackles.

5. It is also understood that if by fog, surf, bad weather or other causes, in the judgment of the commander, the Steamer be prevented from discharging cargo at said port of destination, the Steamer is to have the privilege to store the said goods at Ancon or any other port, or retain the same on board the Steamer, at the expense and risk of the owners, until such time as they can be delivered with safety at the place of destination or trans-shipment.

6. Freight payable in advance, in United States of America Gold Coin, at the rate as per margin, together with all charges incurred for storage, and other necessary expenses at port of delivery. Freight is payable on weight or measurement received or delivered, at Carrier's option.

7. All lighterage from Steamer to Steamer and/or between Steamer and shore of goods named in this Bill of Lading, shall be at the risk of owner, shipper or consignee.

8. Glass, crockery, or other articles contained in glass or crockery, or Castings, or any article whatever of a fragile nature, taken only at risk of shipper, owner or consignee.

9. It is mutually agreed, that the liability of any carrier, as to goods destined beyond its own route, shall be terminated by proper delivery by him to the next succeeding carrier.

10. This Bill of Lading shall have the effect of a Special Contract not liable to be modified by a receipt from or any act of an intermediate carrier.

11. It shall be the duty of the Shipper, Consignee, Owner, or his Agent or representative, to examine the said packages BEFORE REMOVAL by him to ascertain whether any part thereof shall be in a damaged condition or shall have been lost or shall be missing or not present for delivery to him; and BEFORE REMOVING any part thereof, he shall make and deliver in writing to the Steamer's Agent, a statement of any claim for any loss of or damage to or the absence of any part of said goods which could have been ascertained by him upon such examination before such removal of said goods, and a failure to make such examination and present such statement shall be conclusive evidence in favor of the carrier that all said packages were delivered in accordance with the conditions of this Bill of Lading and that there was not any loss or damage or absence of any part of such goods, which, if it had existed, could have been discovered upon making such examination before taking away or removal of said packages.

12. Liability of Carrier shall in no event be greater than that provided by Sections 4281, 4282 and 4283 of the Revised Statutes of the United States of America, and an Act of the Congress of said United States of America, entitled: "An Act relating to navigation of vessels, bills of lading, and certain obligations, duties, and rights in connection with the carriage of property"—the "Harter Act" so called—approved February 13th, 1893, and Carrier shall have all rights and benefits created by ship owner or carrier by all provisions of all sections of said Revised Statutes and all Acts of the Congress and all Statutes or laws of any State or place where claim thereon may be asserted, limiting or permitting a limitation of a ship owner's or carrier's liability, together with the benefit of all laws of Mexico or Central American Republics, further limiting or permitting a limitation of such liability.

13. If the owner of the vessel shall have exercised due diligence to make said vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from fault or negligence or error of the pilot, master or crew in the navigation or management of the vessel, or from latent or other defect, or unseaworthiness of the vessel whether existing at the time of shipment or at the beginning of the voyage, or during the voyage, but not discovered by due diligence, the consignees or owners of the cargo shall be exempted from liability for contribution in General Average both to vessel as well as to cargo, or for any special charges incurred, but with the vessel owner shall contribute in General Average, and shall pay any such special charges as if such danger, damage or disaster had not resulted from such fault, negligence, error, latent or other defects, or unseaworthiness. Passengers' effects, if any, not to contribute in General Average, but claims for passengers' effects accepted to be allowed in General Average, less their proper contribution in such case. General Average payable according to York-Antwerp Rules of 1890, OR OTHERWISE, as CARRIER interested shall elect.

14. The carrier, charterer, agent and/or owner of the vessel shall only be required to exercise due diligence to make the vessel seaworthy at the time of shipment, commencement of the voyage, or on the voyage, and if such due diligence has been used to make the vessel in all respects seaworthy and properly manned, equipped and supplied, neither the vessel, owner, agents, charterers nor the carrier shall become or be held responsible for damage or loss resulting from unseaworthiness, explosions, bursting of boilers, breakage of shafts, machinery or appurtenance latent defects in the hull, machinery, boilers, rigging, gear, appurtenances, equipmens or appliances, or from any other cause of what kind soever.

IN WITNESS WHEREOF the Agent of said STEAMER hath signed one BILLS OF LADING, one of which Bills of Lading being accomplished the others to stand void. And the Shipper has also signed this Bill of Lading.

Dated at Port Ludlow 4th day of September, 17.

For C. HENRY SMITH, INC., Agents.

All of the provisions above and on the REVERSE SIDE of this BILL OF LADING are hereby agreed to on the part of the SHIPPER

C. HENRY SMITH
BY .....
Shipper

Read Conditions of Special Contract on the Reverse Side Before Signing.

Shippers must sign in full in ink, or if rubber stamp is used the name of the individual signing on behalf of the Shipper must be in ink.

RATES AND/OR MEASUREMENTS SUBJECT TO CORRECTION

FREIGHT			
	CU. FT. AT	PER TON	
	CU. FT. AT	PER TON	
	LBS. AT	PER 2000	
	LBS. AT	PER 2000	
60518	BD. FT. AT 32.00	PER 1000	1936.58
	AT		
	Freight		$
Loaded at Mills			
	Total		$1936.58

281

15. It is agreed, that if said packages be hereon consigned otherwise than "to Order" or "to Order of Shipper" that this instrument, whether Receipt or Bill of Lading, shall not be negotiable nor carrier required to secure a surrender hereof as a condition of delivery to consignee hereon named, and that when so consigned "to Order" or "to Order of Shipper," the name of the party at place of delivery to be notified of arrival shall be given by Shipper and be written hereon. If any of said packages contain dangerous or inflammable or explosive material the shipper and consignee shall each be liable to Carrier for all loss and damage resulting therefrom and Carrier or its ship master may destroy any such package without liability therefor.

16 C. Henry Smith, Inc., reserves the right, in the event of any trouble arising between the Company and any of the Central American Republics, to store the cargo at the risk and expense of owner, shipper and/or consignee until such time as it may be convenient to carry same forward for delivery.

17. Manifest of goods must be furnished one day before ship's departure. Fines imposed on Steamers in any Mexican port, on account of such manifest not being furnished in due time, or errors or omissions therein to be paid by the consignee of goods. The expense of stamped paper and other Custom House charges for landing and delivering goods at port of destination must be paid by the consignee thereof. Shippers will sign this Bill of Lading as such in the under right hand margin.

19. Carrier shall not be or be held liable for any loss of or from or damage to any of said packages that shall result from any of the following causes, to-wit, acts of enemies, pirates, thieves, robbers, arrest or restraint of princes or rulers or people, attachments, acts or takings, or claims or restraints of government or municipal or de facto officers whether acting with or without lawful authority, riots, strikes, stoppage of labor, stoppage in transit or claim of right thereto, fire or water on wharf or land or pier or fire before loaded on or after unloaded from vessel, or collapse of or destruction of or damage to wharf or pier or its coverings, nor if ship owner shall have exercised due diligence to make the vessel on which said packages be shipped in all respects seaworthy, and properly manned, equipped and supplied shall Carrier be liable for any loss or damage that shall result in whole or in part from any or all of the following causes, to-wit, perils of the sea or other waters, fire on board vessel, barratry of master or crew, larceny of master or crew, rising of passengers, present or future latent defects, whether existing at time of shipment or at the beginning of the voyage, in or breakage or fracture of hull, shaft, propeller, fittings or fixtures, valves, pipes, machinery or appurtenances or from explosion, bursting of boilers, collision with vessel or other structure or object, stranding, accident of navigation, fault or error in navigation of vessel, fault or error in management of vessel or of its engines, winches, hoisting gear, fittings, fixtures, ports, hatches, deadlights, valves, cocks, pipes, tanks and their connections and this whether such fault or error be before or after sailing or be in port or at sea; and any omission to exercise such due diligence shall not be presumed, but the same must if claimed or alleged be proven by shipper.

20. Carrier shall not be or be held liable for leakage or wastage of contents of any package nor for breakage of or damage to contents of any package unless shipper first show that such package was of proper strength and in good condition, and that such contents were properly packed therein and in good order when delivered to Carrier and that the package was, while in possession of Carrier, so crushed or broken as to cause such loss or damage; and in no event be liable for loss of or damage to any such contents not specified herein, nor for loss from package or damage to property shipped in tierces, crates, sacks, bundles, bales or which shall consist in whole or in part of glass, crockery, queensware, porcelain, hollowware, pictures, picture frames, stoves or other castings, nor for breakage of castings not cased, decay or deterioration of perishable property, stains to packages, contagion or moisture received from such or other freight, effects of chafing, pressure, climate, heat, cold, sweat, rust, vermin, twisting or bending of metals shipped loose or in bundles, loss or damage resulting from any burning or explosion of cargo, or from inaccuracy or omission of proper marks or description, or from delay, unless it be first proven by shipper that such loss or damage was caused by or resulted from Carrier's neglect or fault or failure in proper loading, stowage, custody, care of proper delivery of said packages. Each package shall be by shipper legibly marked with full address of consignee and if not so marked a delivery of full number of packages of like supposed contents without regard to quality or actual contents shall be a full discharge of Carrier's obligations hereunder and if any of said packages shall be delayed or go astray or be elsewhere landed because not properly marked or contents not properly described, Carrier shall not be liable therefor. Live stock, all perishable property, all live freight, and all property packed in second hand or weak cases, et cet., shall at all times be at owner's risk; and neither fault nor failure nor improper loading nor bad stowage nor improper custody nor want of due care nor improper delivery of or by Carrier shall be presumed but same must if alleged be proven by shipper.

21. Advance charges shall be repaid to, and prepaid freight shall be retained by, Carrier whether vessel or property be lost or not lost at any stage of entire transit, and if all freight and charges due Carrier be not paid after arrival of vessel, Carrier may sell said packages at either public or private sale and as agent for and for account of owner and apply proceeds in payment of freight and all other charges, and if sum so realized be not sufficient to pay all such charges or if such sale be not made, the shipper shall, on demand, pay all such charges or make good such deficiency as the case may be, and ship master may at any time sell or dispose of perishable property when in his opinion same would become decayed or worthless before it could be delivered as herein provided, and if same be so sold or disposed of full freight thereon and all charges shall be paid by shipper

22. The said packages shall be received by consignee at vessel's tackle immediately on her arrival at her said place of delivery without regard to weather; if consignee be not on hand to so receive packages as discharged, Carrier may deliver same to any lighterman or wharfinger or other party or person believed by Carrier to be responsible and who will take charge of said packages, or the same may be kept on board or be landed on wharf or beach or bank or stored in hulks or put in lighters for the owner and at owner's risk and expense.

23. The person who signed this bill of lading as accepting the terms thereof was authorized by the shipper to sign same for the shipper. Carrier shall never be liable for any loss of or damage to said packages nor for any damage or loss suffered in connection therewith unless its negligence or wilful default be shown to have been the sole cause of the same; and if Carrier become liable for any such damage or loss it shall ipso facto be subrogated to and have the benefit of all insurance procured upon said packages. Collectors of customs are hereby authorized to grant a general order for discharge immediately ship be entered at custom house.

24. All claims of shipper or consignee or other party in interest against Carrier or its vessels or the masters thereof for any loss of or damage to or conversion of or mis-delivery of or delay in delivery of said packages or any thereof shall be in writing presented to Carrier or its Agent within sixty days from date of notice of any such loss or damage, etc., and arrival of vessel at port or place of delivery or at any port in distress or earliest newspaper mention of loss or stranding of such vessel on voyage shall each be and fix the date of such notice; and if any such claim be not so presented within said sixty days, such claim shall be and by every court be held to have been released by shipper and to be abandoned and barred; and no suit or any such claim so presented or to recover for any such loss or damage, etc., shall be maintained unless such claim be so presented and such suit be thereupon commenced and summons be served on Carrier within sixty days from and after the day and date that such claim be so presented, provided that if Carrier shall in writing expressly grant further time for the commencement of such suit the same may be commenced within the time so granted therefor; and every such suit not so commenced within said sixty days or within such further time so granted by Carrier shall be and by every court be held to be barred, and all claims and demands against Carrier, alleged by complaint therein shall be so held to have been released by shipper, owner and consignee, and to be abandoned and barred.

25. All liability for loss or damage to goods shall be determined by their invoice cost plus freight. It is expressly understood that the Steamship Company is not accountable for waste, leakage, breakage, insecure packages, chafage to goods in bales, nor for loss or damage from effects of climate or decay; or caused by other cargo in contact or otherwise when properly stowed; nor for explosion of articles on freight or otherwise, nor from unavoidable detention or delay, and it is expressly agreed that the goods named in this Bill of Lading are hereby valued at not exceeding $190.00 per package, and unless a different or other value is expressly written and declared herein, the liability of the Companies therefor, in case of the total loss of all or any of the said goods from any cause, shall not exceed $100.00 per package, and in case of the partial loss of or damage to any of said goods, the liability of the Carriers shall not exceed such proportion thereof per package as the loss or damage on each package shall bear to the sum of $100.00.

26. The shipper hereby represents and declares that the value of each package described on the face of this Bill of Lading does not exceed the sum of $100.00; unless the shipper shall expressly declare and there shall be written on the face hereof a different value; and upon such basis of valuation of said packages, the rate of freight thereon is adjusted.

27. If steamer be disabled on voyage, Carrier may forward said packages to port of delivery by other conveyances at option of its ship master and shall receive additional compensation for such service when rendered and whether performed by its own vessels or those of strangers; and if salvage services be rendered to shipper or said packages by servants or vessel or vessels of Carrier, such service shall be as fully paid for as if rendered by strangers.

28. Carrier is not and shall not be required to deliver said packages at port of delivery at any particular time or to meet any particular market or in time for any particular use; and shipper shall notify consignee or other person or forwarder or carrier at place of delivery to there receive packages as discharged at ship's tackles, and packages may be discharged immediately on arrival of vessel at port or anchorage or wharf or landing.

29. Carrier's vessels are not warranted seaworthy save in so far only as exercise of due care by Carrier in the selection of its agents and superintendents and their attention to their duties and their selection and appointment of ship masters and officers and engineers and crew have secured or may secure it.

30. Carrier shall not be liable for any loss of or any damage by fire to any of said goods capable of being covered by insurance.

31. The shipper shall be liable for any loss or damage to steamer, cargo, lighter or wharf, caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature, whether such shipper be principal or agent; and such goods may be thrown overboard or destroyed at any time without compensation. Extra charges, if any, for discharging, lighterage or other expenses on hazardous goods, declared or considered as such by civil or military authorities, must be borne by the shippers and/or consignees.

32. The steamer shall have a lien on the goods for all freight, primages or charges, and also for all fines or damages which the steamer or cargo may incur or suffer by reason of the illegal, incorrect or insufficient marking, numbering or addressing of packages or description of their contents. Invoices must be made out in accordance with the prescriptions and regulations of the Port, Customs or Consular authorities. Consular, Board of Health or other certificates required to accompany the goods are to be produced by shippers, and any detention, delay, charges or penalties incurred or occurring to cargo or steamer, owing to the want of such certificates, are to be borne by the shippers and/or consignees. Steamer or its owner will not be responsible for delay in the delivery or in the over carriage of goods not plainly marked with the port of destination, and the name and address of the consignee.

33. It is expressly stipulated that if said packages need to be lightered at any time or port or place, all lighterage services rendered shall be and be deemed to have been rendered by an independent carrier or person; if such services be procured by Carrier they shall be deemed to be and to have been so procured by it acting as agent therefor of shipper, and Carrier's liability as carrier at any port or place where such lighterage be needed, shall end immediately vessel be anchored at or near to said port or place. Carrier's liability after steamer be at anchor at or near to said port of delivery shall be that of warehouseman only, and said packages after unhooked from ship's tackles at such anchorage be at owner's risk.

34. Should, in the opinion of the master, the weather or sea be such as to cause an unusual delay in the discharge of the whole or any part of the goods herein mentioned, the ship may proceed to her next regular port of call, from whence the over-carried cargo be returned at the expense and risk of shipper, owner or consignee. In case the entry of the port of discharge or transhipment or communication therewith rendering or being liable to render the vessel liable to quarantine at any subsequent port, or in case of the master considering the entry of said port or any port, either from epidemic or otherwise, unsafe or injurious to the further prosecution of the steamer's intended voyage, the goods may be landed or put into a lazarette, hulk, lighter or other receptacle therefor, at such or any other available port the master may consider safe, at shipper's risk and expense, and such discharge shall be proper, final delivery and all liability of the steamer or carrier hereunder shall absolutely cease. In the event of quarantine, the goods may be discharged on arrival at port of delivery or transhipment into quarantine depot, hulk, lighter, or other vessel or receptacle necessary or proper for the ship's dispatch, at the consignee's risk and expense, or the master may carry the goods to the nearest convenient port and there land them or tranship them, and advices mailed to the consignee, if named, otherwise to shippers, shall be deemed, under this agreement, a due and complete delivery of said goods under this Bill of Lading, and such goods shall be liable and a lien thereon be held for all quarantine expenses incurred in consequence. If the ship is prevented by quarantine from reaching her destination, or making due delivery of the goods, or is detained at quarantine, the goods may be forthwith, without previous notice to shipper, owner or consignee, discharged into depots, lazarettes, hulks, crafts or lighters, at the risk and expense of shipper, owner and consignee, all and any of them, and such discharge shall be deemed a full and final delivery of the goods, all risk, responsibility and expenses of the Carrier therefor, as carrier, bailee, or otherwise, ending as soon as the goods are delivered from the ship's tackle, and all expenses thereby or thereafter incurred and all increased cost of such delivery shall be paid by shipper, owner and consignee, all and any of them, the Carrier retaining a lien on the goods therefor; but should the vessel or goods not be admitted, or such discharge be impracticable, or so in the master's opinion, the Carrier may forthwith without previous notice proceed to the nearest safe port, or at the ship's option to the nearest safe port to which the ship is bound, at the risk and expense of shipper, owner and consignee, all and any of them, and there land the goods, as if at the original port of discharge, at the risk and expense of shipper, owner and consignee, all and any of them, he, and they paying freight from the original port of discharge and the Carrier retaining a lien on the goods therefor and for all costs, charges and expenses incurred, and for all increased cost of delivery. Carrier's freight from original point or port of shipment to port of delivery shall be also then earned.

35 "Carrier" includes stockholders and vessels and masters thereof; "packages" means all property mentioned or referred to on face hereof; "shippers" and "owners" mean shipper and all owners of said packages and all pledges thereof other than Carrier; "Owner's risk" and "O. R." mean that shippers have agreed that Carrier shall not be liable for any loss or damage unless it be shown to have entirely resulted from its negligence or wilful default.

36. Carrier's liability hereunder shall be several and shall end and its rights dependent on delivery accrue immediately it has made delivery as above provided; and if freight be prepaid to carrier beyond said first mentioned place of delivery. Carrier shall be shipper's agent for payment to other carrier of such freight as may be so paid for other carrier's use; and freight of every carrier of said packages by water other than C. Henry Smith, Inc., shall, at option of such carrier, be deemed earned when said packages shall be laden on board other carrier's vessel and shall be payable by shipper whether such other carrier's vessel or said packages be thereafter lost or not lost at any stage of entire transit;—no carrier shall be liable for delay or misdelivery or conversion or loss or damage unless it be shown that same occurred while said packages were in its possession.

37. The rights and liabilities of all carriers by water shall be determined hereby; if Carrier deliver said packages to other carrier for carriage, such delivery shall be made as shipper's agent, and not as carrier, and if such delivery be to any carrier by land, or by water, shipper agrees to be bound by the stipulations and conditions of such transfer receipt, shipping receipt, or bill of lading as may be in use for such transfer or by such carrier for like transfer or carriage at place of such transfer.

38. Carrier shall have a lien on said property for all fines imposed on it and for all expense to it resulting from shipper's failure to furnish proper Consular or Custom House papers in due time or resulting from other errors or omissions of shippers, and all such fines and expenses shall be reimbursed to Carrier by consignee before said property shall be delivered to him.

39. All expense of cooperage and repairs of packages shall be paid by shipper.

40. The Carrier is hereby expressly granted the right and option of delivering the merchandise represented by this Bill of Lading to consignee from alongside, or of landing and storing said merchandise either in lighters, hulks or wharf, or in warehouse immediately, upon the arrival of said steamer at the port of discharge of said merchandise, without notice to and at the expense of consignee; and in the event of its so landing and storing said merchandise, such Carrier is thereupon hereby released from all further liability for loss or damage thereafter, whether arising from fire or from any other cause.

41. That merchandise on wharf or in warehouse awaiting shipment, transhipment or delivery shall be at owner's risk of loss or damage by fire, flood, and/or the giving away or falling or destruction in whole or in part of the warehouse or the wharf; or any structure thereon, not happening through the fault or negligence of Carrier or representative; and further, that the Carrier shall not be liable for destruction of or damage to goods by fire while upon its vessels, or before loading thereon or after unloading the same therefrom, unless such fire is caused by the design or neglect of the Carrier.

42. If the owner shall have exercised due diligence to make the steamer in all respects seaworthy, and to have her properly manned, equipped and supplied, it is hereby agreed that, in case of danger, damage or disaster resulting from faults or errors in navigation, or in the management of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent defect or unseaworthiness was not discovered or discoverable by the exercise of due diligence), the owner shall not be liable therefor, but the consignees or owners of the cargo shall, nevertheless, pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the ship owner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit, or to relieve the adventure from any common peril, all with the same force and effect, and to the same extent, as if such danger, damage or disaster had not resulted from or been occasioned by faults or errors in navigation or in the management of the vessel, or any latent defect or unseaworthiness.

43. Also that in case any steamer of the Carriers under this Bill of Lading be fumigated by the Clayton apparatus or otherwise, the ship owner shall not be liable for any loss, damage or deterioration resulting from such fumigation.

The several carriers shall have a lien upon the goods specified in this Bill of Lading for all arrearages of freight and charges due by the same owners or consignees on other goods. In case of loss, detriment or damage to the goods, or delay in the transportation thereof, imposing any liability hereunder, the carrier in whose actual custody they were at the time of such loss, damage, detriment or delay, shall alone be responsible therefor. The receipt of any carrier for the goods shall be prima facie evidence of the condition in which he received them in a suit against any other carrier.

44. In the event of any cargo being accepted and carried with freight charges to collect at destination, and if through insufficiency of containers or any other cause whatsoever, such cargo or any part thereof is refused by the connecting carriers, and the Carrier having such cargo in possession at the time of such refusal is compelled to return the same to the port of origin or otherwise dispose of the same, all freight and other charges and all expense of every nature whatever, that may be reasonably incurring in the rehandling and/or discharge of said cargo, shall be a charge and lien upon and against said cargo, payable by the shipper, owner and/or consignee, prior to taking delivery or effecting reshipment of such cargo.

B/L No.

SOUTH AMERICA PACIFIC LINE

C. HENRY SMITH, INC., AGENTS

311 CALIFORNIA ST. - SAN FRANCISCO, U. S. A.

S. S. BAJA CALIFORNIA SINALOA

S. S. REGULUS GOVERNOR FORBES

BILL OF LADING

S.S. "REGULUS" Voy. 2

SHIPPER: C. Henry Smith, San Francisco, Calif.

CONSIGNED TO (Mail Address - Not for purposes of Delivery): Braden Copper Co. Valparaiso, Chile.

Port of discharge / Through rate to: Valparaiso, Chile.

RECEIVED from C. Henry Smith for shipment from Port Ludlow, Wash. by Steamer "Regulus" of C. HENRY SMITH, INC., Agents, or any other of said Company's Steamers, or Steamers employed by it, the following Merchandise, Marks, Numbers, Articles, Weights and/or Measurements as follows:

COPY NON-NEGOTIABLE

MARKS	NO. PKGS.	DESCRIPTION OF ARTICLES	WEIGHT	CUBIC FEET
		-: UNDER DECK :-		
B/M	26,904	Twenty-six Thousand, Nine Hundred Four Pieces Rough Lumber said to contain Five Hundred Thirty-seven Thousand, Six Hundred Ninety-seven (537,697) Feet Board Measure.		
		-: ON DECK :-		
	9,701	Nine Thousand, Seven Hundred One Pieces Rough Lumber said to contain Two Hundred Thirteen Thousand, Six Hundred Fifty-three (213,653) Feet Board Measure.		

all in apparent good order, except when otherwise noted—the value, weight, quantity, quality, or condition of contents of said packages not being known to the Carriers.

Delivery of Lumber to be taken at average rate of ..... M ft. per day, and general cargo at average rate of net less than 200 tons per day or when less than 200 tons delivery to be taken on day of arrival, Sundays and holidays only excepted, failing which demurrage is to be paid at the rate of $1500.00 U. S. Gold per running day for S. S. REGULUS and $750.00 per running day for other steamers.

Should the steamer be fumigated by the Clayton apparatus or otherwise any damage resulting by such fumigation to goods shipped will not be accounted for by the owners or agents of the steamers of this line.

WHICH PACKAGES WERE RECEIVED AND ARE TO BE HELD AND CARRIED AND DELIVERED BY THE CARRIERS AND BY EACH SEVERAL SUCCEEDING CARRIERS, UPON THE EXPRESS AGREEMENT AND SUBJECT TO ALL THE STIPULATIONS AND CONDITIONS HEREON AND ON THE REVERSE SIDE HEREOF AND UNDER WHICH FREIGHT RATES ON SAID PACKAGES WERE ADOPTED AND SAID PACKAGES RECEIVED FOR TRANSPORTATION AND TO ALL OF WHICH THE SHIPPER HAS AGREED AND HEREBY DOES AGREE, AND EVERY HOLDER HEREOF SHALL BE HELD BOUND THEREBY WHETHER THE SAME BE PRINTED OR WRITTEN.

1. The said packages are to be forwarded with such reasonable dispatch as the general business of the Carriers will permit, by Steamer or Steamers of C. HENRY SMITH, INC., Agents, upon and under the same agreement and subject to all of the said Stipulations and Conditions hereon, and ON THE REVERSE SIDE hereof, to the port of destination or so near thereto as safe navigation of such vessel or vessels shall then permit (but with option to the Master of the vessel or vessels to sail without pilots, tow and assist vessels, deviate, and to lighter, surf, transship, land and reship said packages or any thereof, and to stop and to land and receive passengers and freight at other ports or places on or off the usual route and in any order), and there, at vessel's tackles, and in like condition to be delivered unto the consignee or his or their assigns or representatives, or if he or they be not on hand to so receive the same, or if said packages be destined beyond said port or place then to any lighterman or wharfinger or to any forwarder or other Carrier for and instead of the said named person, company, assigns, corporation or representatives; and freight at tariff rates (unless otherwise agreed) and all charges advanced by Carriers and average shall be paid in full in U S. Gold Coin on any such delivery, and full freight charges to be so paid on all damaged or unmanned packages; and to secure payment of all such charges said packages are hereby pledged to Carrier.

2. Goods in refrigerator. Steamer shall not be accountable for the condition of goods shipped under this Bill of Lading nor for any loss or damage thereto arising from failure or breakdown of machinery, insulation or other appliances nor for detention, nor the consequences of any act, neglect, default or error of judgment of the Master, Officers, Engineers, Crew or other persons in the service of the Owners, nor for any other cause whatsoever, and steamer shall be at liberty to jettison the whole or any part thereof if considered necessary on account of decomposition.

3. In no event shall Carrier be liable for loss of or damage to any package, after it shall be unhooked from vessel's tackles.

4. It is also understood that if by fog, surf, bad weather or other cause, in the judgment of the commander, the Steamer be prevented from discharging cargo at said port of destination, the Steamer is to have the privilege to store the said goods at Arena or any other port, or retain the same on board the Steamer, at the expense and risk of the owners, until such time as they can be delivered with safety at the place of destination or trans-shipment.

5. Freight payable in advance, in United States of America Gold Coin, at the rate as per tariff, together with all charges incurred for storage, and other necessary expenses at port of delivery. Freight is payable on weight or measurement received or delivered, carrier's option.

6. Freight payable in advance, in United States of America Gold Coin, at the rate as per tariff, together with all charges incurred for storage, and other necessary expenses at port of delivery. Freight is payable on weight or measurement received or delivered, carrier's option.

7. All lighterage from Steamer to Steamer and/or between Steamer and shore of goods named in this Bill of Lading, shall be at the risk of owner, shipper or consignee.

8. Glass, crockery, or other articles contained in glass or crockery, or Castings, or any articles whatever of a fragile nature, taken only at risk of shipper, owner or consignee.

9. It is mutually agreed, that the liability of any carrier, as to goods destined beyond its own route, shall be terminated by proper delivery by him to the next succeeding carrier.

10. This Bill of Lading shall have the effect of a Special Contract not liable to be modified by a receipt from or any act of an intermediate carrier.

11. It shall be the duty of the Shipper, Consignee, Owner, or his Agent or representative, to examine the said packages BEFORE REMOVAL by him to ascertain whether any part thereof shall be in a damaged condition or shall have been lost or shall be missing or not present for delivery to him; and BEFORE REMOVING any part thereof, he shall make and deliver in writing to the Steamer's Agent, a statement of any claim for any loss of or damage to or the absence of any part of said goods which could have been ascertained by him upon such examination before such removal of such goods, and a failure to make such examination and present such statement, shall be conclusive evidence in favor of the carriers that all of said packages were delivered in accordance with the conditions of this Bill of Lading and that there was not any loss or damage or absence of any part of such goods, which, if it had existed, could have been discovered upon making such examination before taking away or removal of said packages.

12. Liability of Carrier shall in no event be greater than that provided by Sections 4281, 4282 and 4283 of the Revised Statutes of the United States of America, and an Act of the Congress of the United States, approved February 13th, 1893, entitled: "An Act relating to navigation of vessels, bills of lading, and certain obligations, duties, and rights in connection with the carriage of property"—the "Harter Act" so called—approved February 13th, 1893, and Carrier shall have all rights and benefits granted to ship owners by said Harter Act, all provisions of all sections of said Revised Statutes and all Acts of the said Congress and all Statutes or laws of any State or place where claim hereon may be asserted, limiting or permitting a limitation of a ship-owner's or carrier's liability, together with the benefit of all laws of Mexico or Central American Republics, further limiting or permitting a limitation of such liability.

13. If the owner of the vessel shall have exercised due diligence to make said vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from fault or negligence of the pilot, master or crew in the navigation or the management of the vessel, or from latent or other defect, or unseworthiness of the vessel, whether existing at the time of shipment or at the beginning of the voyage, or during the voyage, but not discoverable by due diligence, the consignees or owners of the cargo shall not be exempted from liability for contributions to General Average both to vessel as well as to cargo, or for any special charges incurred, but, with the vessel owner shall contribute to General Average, and shall pay any such special charges as if such danger, damage or disaster had not resulted from such fault, negligence, error, latent or other defects, or unseworthiness. Passengers' effects, if any, not to contribute to General Average, but claims for passengers' effects ascribed to be allowed to General Average, less their proper contribution in such case. General Average payable according to York-Antwerp Rules of 1890, OR OTHERWISE, as CARRIER interested shall elect.

14. The carrier, charterer, agent and/or owner of the vessel shall only be required to exercise due diligence to make the vessel seaworthy at the time of shipment, commencement of the voyage, or on the voyage, and if such due diligence has been used to make the vessel in all respects seaworthy and properly manned, equipped and supplied, neither the vessel, owner, agent, charterer nor the carrier shall become or be held responsible for damage or loss resulting from unseaworthiness, explosions, bursting of boilers, breakage of shafts, latent defects in machinery or appurtenance latent defects in the hull, machinery, boilers, rigging, gear, appurtenances, equipment or appliances, or from any other causes of what kind whatsoever.

IN WITNESS WHEREOF, the Agent of said STEAMER hath signed ..... A... BILLS OF LADING, one of which Bills of Lading being accomplished the others to stand void. And the Shipper has also signed this Bill of Lading.

Dated at Port Ludlow 4th day of September 17.

For C. HENRY SMITH, INC., Agents.

All of the provisions above and on the REVERSE SIDE of this BILL OF LADING are hereby agreed to on the part of the SHIPPER.

Shipper.

BY

Read Conditions of Special Contract on the Reverse Side Before Signing.

Shippers must sign in full in ink, or if rubber stamp is used the name of the individual signing on behalf of the Shipper must be in ink.

RATES AND/OR MEASUREMENTS SUBJECT TO CORRECTION

FREIGHT			
	CU. FT. AT ..... PER TON		
	CU. FT. AT ..... PER TON		
	LBS. AT ..... PER 2000		
	LBS. AT ..... PER 2000		
$61.500	BD. FT. AT 30.00 PER 1000	$4044.90	
	AT		
	Freight	$	
Loaded at Mills	Total	$4044.90	

U.S. DIST. COURT
NOS. DIST. OF CALIF.
FILED
Filed 3/11/7 Clerk

Stipulations and Conditions Referred to on Face Hereof and All of which are Agreed to by Shipper

16. It is agreed, that if said packages be herein consigned otherwise than "to Order" or "to Order of Shipper" that this instrument, whether Receipt or Bill of Lading, shall not be negotiable nor carrier required to secure a surrender hereof as a condition of delivery, and persons become bound and liable to pay the consignee "to Order" or "to Order of Shipper," the name of the party at place of delivery to be notified of arrival shall be given by Shipper and be written hereon. If any of said packages contain dangerous or inflammable or explosive material the shipper and consignee shall each be liable to Carrier for the loss and damage resulting therefrom and Carrier or its ship master may destroy any such package without liability therefor.

16. C. Henry Smith, Inc., reserves the right in the event of any trouble arising between the Company and any of the Central American Republics, to store the cargo at the risk and expense of owner, shipper and/or consignee at such place as it may be convenient to carry same forward for delivery.

17. Manifest of goods must be furnished one day before ship's departure. Fines imposed on Steamers in any Mexican port, on account of such manifest not being furnished in due time, or errors or omissions thereof, to be paid by the consignee of goods. The expense of stamped paper and other Custom House charges for landing and delivering goods at port of destination must be paid by the consignee thereof. Shippers will sign this Bill of Lading as such in the under right hand margin.

18. Carrier shall not be or be held liable for any loss of or from or damage to any of said packages that shall result from any of the following causes, to-wit, acts of enemies, pirates, thieves, robbers, arrest or restraint of princes or rulers or people, disturbances, acts or taking, or title to or restraint of government or municipal or de facto officers whether acting with or without lawful authority, riots, strikes, stoppage of labor, stoppage in transit or delay in all or any parts of the journey or war or civil war or fire before loaded on or after unloaded from vessel, or collapse of or destruction of or damage to wharf or docks or its servants, nor if ship master shall have exercised due diligence to make the vessel on which said packages be shipped be in all respects seaworthy, and properly manned, equipped and supplied. Carrier shall be liable for any loss or damage that shall result in whole or in part from any or all of the following causes, to-wit, perils of the sea or other waters, fire on board vessel, barratry of master or crew, larceny of master or crew, rising of passengers, pressure or latent defects, whether existing at the beginning of the voyage or at any time during the voyage, in or breakage or fracture of hull, shaft, propeller, fittings or fixtures, valves, pipes, machinery or appurtenances, or from explosion, escape of boilers, collision with vessel or other structure or object, stranding, accident of navigation, fault or error in navigation or in the management of the vessel, jettison, overboard or of its engines, winches, hoisting gear, fittings, fixtures, ports, hatches, deadlights, valves, locks, pipes, and from all acts of Carrier's agents while neither such loss or damage arose before or after sailing or he in port or at sea; and any omission to exercise such due diligence shall not be presumed unless the same must affirmatively be proved against by shipper.

20. Carrier shall not be or be held liable for leakage or wastage of contents of any package nor for breakage of or damage to contents of any package unless shipper first show that such package was of ordinary strength and in good condition, and that such contents were properly packed therein and in good order when delivered to Carrier and that the package as a whole, within in possession of Carrier, so crushed or broken as to cause such loss or damage; and in no event be liable for loss of or damage to any such contents not specified in writing, nor for loss of or damage to any package carried in trucks, cartes, sacks, bundles, bales or which shall consist in whole or in part of glass, crockery, stoneware, porcelain, or articles of similar brittle frames, stoves or other castings, nor for breakage of castings not caused, decay or deterioration of perishable property, nor for leakage of containers, nor for decay arising from acids or other freight, effects of chafing, pressure, climate, heat, cold, sweat, rust, vermin, twisting or bending of iron or steel hoops or ties, nor for injury to any package resulting from any burning or explosion of cargo, or from inaccuracy or omission of package marks or description, nor if loss or damage be from or through any cause that such loss or damage was caused by or resulted from Carrier's neglect or fault or failure to proper loading, stowage, custody, care or proper delivery of any such package shall be by shipper legibly marked with full address of consignee and of not so marked a delivery of full number of packages shall be sufficient evidence of not regard to quality or actual contents shall be a full discharge of Carrier's obligations hereunder and if any of said packages shall be delayed or go astray or be otherwise handled because not properly marked or contents not properly described, Carrier shall not be liable therefor. Any claim for loss, damage or delay, all claims for short all property packed in second-hand or weak cases, at set, shall at all times be at owner's risk; and neither Carrier nor its agents shall be responsible for any loss or improper custody nor want of due care nor improper delivery of or by Carrier shall be presumed that same must if allowed be proved by shipper.

20. Carrier shall not be liable for any loss of or any damage by fire to any of said goods capable of being insured against by insurance.

21. The shipper shall be liable for any loss or damage to steamer, cargo, lighter or wharf, caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature, whether such shipper be principal or agent; and such goods may be thrown overboard or discharged at any time without compensation. Extra charges, if any, for discharging, lighterage or other expenses on hazardous goods, declared or considered as such by civil or military authorities, must be borne by the shippers and/or consignees.

21. Any steamer shall have a lien on the goods for all freight, primages or charges, and also for all fines or damages which the steamer or cargo may incur or suffer by reason of the illegal, incorrect or insufficient marking, numbering or addressing of packages or description of their contents. Invoices must be made out in accordance with the laws, regulations of the Port, Customs or Consular authorities. Consular, Board of Health or other certificates required to accompany the goods are to be procured by shippers, and any detention, delay, charges or penalties incurred or occurring to cargo or steamer, owing to the want of such certificates, are to be borne by the shippers or the consignees. Steamer or its owner will not be responsible for delay in the delivery or in the over-carriage of goods not plainly marked with the proper address, and ill the name and address of the consignee.

22. It is expressly stipulated that if said packages need to be lightered at any time or port or place, all lighterage services rendered shall be and be deemed to have been rendered by or with independent carrier or lighterman; if such services be procured by Carrier they shall be deemed to be and to have been so procured by it acting as special shipper of shippers' and Carrier's liability as carrier at any port or place where such lighterage be needed, shall end immediately vessel be anchored at or near to said port or place. Carrier's liability as carrier at such anchorage or near to said port of delivery shall be that of warehousemen only, and said packages after arrival at such port shall be at consignee's risk and expense.

23. It is expressly stipulated that if said packages need to be lightered at any time or port or place, all lighterage services rendered shall be and be deemed to have been rendered by or with independent carrier or lighterman; if such services be procured by Carrier they shall be deemed to be and to have been so procured by it acting as special shipper of shippers' and Carrier's liability as carrier at any port or place where such lighterage be needed, shall end immediately vessel be anchored at or near to said port or place. Carrier's liability as carrier at such anchorage or near to said port of delivery shall be that of warehousemen only, and said packages after arrival at such port shall be at consignee's risk and expense.

24. Should, in the opinion of the master, the weather or sea be such as to cause any unusual delay in the discharge of the whole or any part of the goods herein mentioned, the ship may proceed to her next regular port of call, from whence the owner-consignee. In case the entry of the port of discharge or transhipment or communication cannot be obtained, or be refused, or being obtained, the consignee shall not enter at any subsequent port, or in case of the master's considering the entry of said port dangerous or impracticable, or in case of delay arising from any of the causes for further prosecution of the steamer's intended voyage, the goods may be landed or put into craft or lighters at the Carrier's risk and expense, and as soon as practicable after the master may consider safe, at shipper's risk and expense, and such delivery shall be deemed a full and final delivery at the port of carrier hereunder and shall absolutely cease. In the event of quarantine, the goods may be landed at the port of arrival or delivery or transhipment into craft or lighters, or other vessel or receptacle necessary or proper for the ship's despatch, at the risk and expense of the shipper or the master may proceed with the goods to the convenient port and there land them or tranship them, and advices mailed to the consignee, and thereupon all liability under this bill of lading shall be deemed, ended and complete delivery of said goods under this Bill of Lading, and such goods shall be at the risk and expense of the consignee. If the discharge of the goods at the port to which the ship is prevented by quarantine from reaching her destination, or making due delivery of the goods there by reason of such quarantine, the goods may be discharged as otherwise, ending as soon as the goods are delivered from the ship's tackle, and all expenses incurred thereby shall be paid by shipper, owner and consignee, all and any of them, and such discharge shall be deemed a full and final delivery at the port of carrier hereunder. The Carrier reserving a lien on the goods therefor and for all costs, charges and expenses incurred in connection therewith and a reasonable compensation to the master.

25. Carrier's liability hereunder shall be several and shall end and its rights and liabilities hereunder shall terminate upon delivery at destination or transhipment and if freight be prepaid to carrier beyond said first mentioned place of delivery. Carrier shall be entitled to charge for transhipment in addition to freight and may be required to pay such charges for use; and freight of every carrier of said packages by water shall be deemed earned when said packages shall be laden on board other carrier's vessel and shall be payable when said packages shall be laden on board other carrier's vessel or said packages be thereafter lost or not lost at any stage of entire transit;—no carrier shall be liable for any loss or damage occurring on the journey or after the delivery to it, except as shown that occurred while said packages were in its possession.

26. The liabilities and liabilities of all carriers by water shall be determined hereby; if Carrier deliver said packages to other carrier for carriage, such delivery shall be deemed to be delivery to consignee, and such carrier, as to such packages carried by land, or by water, shipper agrees to be bound by the stipulations and conditions herein contained; provided, however, that nothing herein shall relieve any line in use for such transfer or by such carrier for like transfer or carriage at place of such transfer.

27. Carrier shall have a lien upon said property for all dues imposed on it and for all expense to it resulting from shipper's breach of any agreement, or from inaccurate description, wrong address, wrong time or wrong route, or from other errors or omissions of shippers, and all such fines and expenses shall be recoverable from shipper or consignee of said property and Carrier shall have a lien upon said property to secure payment to him.

28. All expenses of cooperage and repairs of packages shall be paid by shipper.

29. All expenses of cooperage and repairs of packages shall be paid by shipper.

30. The Carrier is hereby expressly granted the right and option of delivering said packages to consignee at wharf, and the Carrier is hereby relieved from all liability of landing and storing said merchandise either in lighters, hulks or wharf, or in warehouse thereafter, immediately upon the arrival of said packages at such wharf, said merchandise, without notice to and at the expense of consignee; and in the event of the Carrier's exercising the option herein granted, the Carrier is hereby released from all further liability for loss or damage thereafter, whether arising from the act of God or otherwise.

31. That merchandise on wharf or in warehouse awaiting shipment, transshipment or delivery shall be at owner's risk of every description by fire, flood, and/or the giving away or falling or destruction in whole or in part of the warehouse or wharf, or any structure containing the same, not happening by the fault or negligence of Carrier or representatives; and further, that the Carrier shall not be responsible for loss of or damage to any of said goods after the same have been delivered before loading thereon or after unloading the same therefrom, unless such dire is caused by the negligence of Carrier's agents.

32. If the owner shall have exercised due diligence to make the steamer in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that, in case of danger, damage or disaster resulting from faults or errors in navigation or in the management of the steamer, or from any latent defect in the steamer, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of the shipment or at the beginning of the voyage (provided the latent defect or unseworthiness was not known to the owner or his superintendent), the owner of the steamer shall not be liable therefor, but the consignees or owners of the cargo shall, nevertheless, pay in full their proportion of any general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred in order to common benefit, or to relieve the adventure from any common peril, all with the same effect as if such fault or error had not been committed, such latent defect or unseaworthiness not permitted from or been occasioned by faults or errors in navigation or in the management of the steamer or from latent defects or unseaworthiness.

33. Also that in case any steamer of the Carriers under this Bill of Lading be fomizated by the Clayton apparatus or otherwise, the ship owner shall not be liable for any loss, damage, detriment or deterioration resulting therefrom.

34. The several carriers shall have a lien upon the goods specified in this Bill of Lading for all freight and charges and expenses due thereon from consignees or consignors.

35. In case of loss, detriment or damage to the goods, or delay in the transit, or delivery thereof, imposing any liability upon the carrier in whose actual custody they were at the time of such loss, damage, detriment or delay, shall alone be responsible therefor. The receipt of any carrier for the goods shall be prima facie evidence of the condition in which he received them in a suit against any other carrier.

36. In the event of any cargo being accepted and carried with freight charges to collect at destination, and if through insufficiency of containers or any other cause whatsoever, such cargo or any part thereof is refused by the consignee carriers, and the Carrier having such cargo in possession at the time of such refusal is compelled to return the same to the port of origin or otherwise dispose of the same, all freight and other charges and all expenses of every nature whatever that may be reasonably incurring in the reloading and/or discharge of said cargo, shall be a charge and lien upon and against said cargo, payable by the shipper, owner and/or consignee, prior to taking delivery or affecting reshipment of such cargo.

B/L No.

SOUTH AMERICA PACIFIC LINE

C. HENRY SMITH, INC., AGENTS

311 CALIFORNIA ST. - SAN FRANCISCO. U. S. A.

S. S. BAJA CALIFORNIA
SINALOA

BILL OF LADING

S. S. REGULUS
GOVERNOR PURDEE

S. S. "REGULUS" Voy. 2

SHIPPER: C. Henry Smith, San Francisco, Calif.

CONSIGNED TO (Mail Address - Not for purposes of Delivery): Order/Nat. Jorge D. Payet y Cia, Arica, Chile, in transit to Bolivia

Port of discharge / Through rate to } Arica, Chile, in transit to Bolivia,

RECEIVED from C. Henry Smith for shipment from Port Ludlow, Wash., by Steamer "Regulus" of C. HENRY SMITH, INC., Agents, or any other of said Company's Steamers, or Steamers employed by it, the following Merchandise, Marks, Numbers, Articles, Weights and/or Measurements as follows:

MARKS	NO. PKGS.	DESCRIPTION OF ARTICLES	WEIGHT	CUBIC FEET
	1,279	-: UNDERDECK :- One Thousand, Two Hundred Seventy-nine Pieces Rough Lumber said to contain Thirty Thousa-d, Thirteen (30,013) Feet Board Measure.		
N/M	7,440	-: ON DECK :- Seven Thousand, Four Hundred Forty Pieces Rough Lumber said to contain One Hundred Forty Thousand Five Hundred Eighty-six (140,586) Feet Board Measure.		
	502	Three Hundred Two Bundles containing One Thousand, Eight Hundred Twelve (1812) Pieces Dressed Lumber said to contain Eight Thousand, Six Hundred Forty-two (8,642) Feet Board Measure.		

COPY NON-NEGOTIABLE

All in apparent good order, except when otherwise noted—the value, weight, quantity, quality, or condition of contents of said package not being known to the Carriers.

Delivery of Lumber to be taken at average rate of ..... M ft, per day, and general cargo at average rate of not less than 500 tons per day or when less than 500 tons delivery to be taken on day of arrival, Sundays and holidays only excepted, failing which demurrage is to be paid at the rate of $1500.00 U. S. Gold per running day for S. S. REGULUS and $750.00 per running day for other steamers.

Should the steamer be fumigated by the Clayton apparatus or otherwise any damage resulting by such fumigation to goods shipped will not be accounted for by the owners or agents of the steamers of this line.

1. WHICH PACKAGES WERE RECEIVED AND ARE TO BE HELD AND CARRIED AND DELIVERED BY THE CARRIERS AND BY EACH SEVERAL SUCCEEDING CARRIERS, UPON THE EXPRESS AGREEMENT AND SUBJECT TO ALL THE STIPULATIONS AND CONDITIONS HEREON AND ON THE REVERSE SIDE HEREOF AND UNDER WHICH FREIGHT RATES ON SAID PACKAGES WERE ADJUSTED AND SAID PACKAGES RECEIVED FOR TRANSPORTATION AND TO ALL OF WHICH THE SHIPPER HAS AGREED AND HEREBY DOES AGREE, AND EVERY HOLDER HEREOF SHALL BE HELD BOUND THEREBY WHETHER THE SAME BE PRINTED OR WRITTEN.

2. The said packages are to be forwarded with such reasonable dispatch as the general business of the Carriers will permit, by Steamer or Steamers of C. HENRY SMITH, INC., Agents, upon and under the same agreement and subject to all of the said Stipulations and Conditions hereon and on the REVERSE SIDE hereof, to the port of destination or so near thereto as safe navigation of such vessel or vessels shall then permit (as will appear to the Master of the vessel or vessels to sail without pilots, tow and assist vessels, deviate, and to lighter, sort, transship, load and reship said packages or any thereof, and to give and to load and receive passengers and freight at other ports or places on or off the usual route and to any order), and there, at vessel's tackles, and in like condition to be delivered onto the consignee or his or their assigns or representatives, or if he or they be not on hand to so receive the same, or if said packages be destined beyond said port or place then to any lighterman or wharfinger or to any forwarder or other Carrier for said instead of the said named person, company, assigns, corporation or representatives, and freight at tariff rates (unless otherwise agreed) and all charges advanced by Carriers and storage shall be paid in full in U. S. Gold Coin on such delivery, and full freight charges to be so paid on all damaged or unsound packages; and to secure payment of all such charges said packages are hereby pledged to Carrier.

3. Goods in refrigerator. Steamer shall not be accountable for the condition of goods shipped under this Bill of Lading nor for any loss or damages thereto arising from, or by reason of breakdown of machinery, insulation or other appliances nor for detention, error in management of any of said articles, default or error of judgment of the Master, Officers, Crew or other persons in the service of the Owners, nor for any other cause whatsoever, and steamer shall be at liberty to jettison the whole or any part thereof if considered necessary on account of decomposition.

4. In no event shall Carrier be liable for loss of or damage to any package, after it shall be unhooked from vessel's tackles.

5. It is also understood that if by fog, surf, bad weather or other causes, in the judgment of the commander, the Steamer be prevented from discharging cargo at said port of destination, the Steamer is to have the privilege to store the said goods at Ancon or any other port, or retain the same on board until the return trip of the steamer, until such time as they can be delivered with safety at the place of destination or trans-shipment.

6. Freight payable in advance, to United States of America Gold Coin, at the rate as per tariff, together with all charges incurred for storage, and other necessary expenses at port of delivery. Freight is payable on weight or measurement received or delivered, at Carrier's option.

7. All lighterage from Steamer to Steamer and/or between Steamer and shore of goods named in this Bill of Lading, shall be at the risk of owner, shipper or consignee.

8. Glass, crockery, or other articles contained in glass or crockery, or Castings, or any article whatever of a fragile nature, taken only at risk of shipper, owner or consignee.

9. It is mutually agreed, that the liability of any carrier, as to goods destined beyond the end of its route, shall be terminated by proper delivery by him to the next succeeding carrier.

10. This Bill of Lading shall have the effect of a Special Contract not liable to be modified by a receipt from or any act of an intermediate carrier.

11. It shall be the duty of the Shipper, Consignee, Owner, or his Agent or representative, to examine the said packages BEFORE REMOVAL by him to ascertain whether any part thereof shall be in a damaged condition and shall have the right, but shall be missing or not present for delivery to him; and BEFORE REMOVING any part thereof, he shall make said delivery in writing to the Steamer's Agent, a statement of any claim for any loss of or damage to or the absence of any part of said goods which could have been ascertained by such examination before such removal of said goods; and a failure to make such examination and present such statement, shall be conclusive evidence in favor of the carriers that all of said packages were delivered in accordance with the conditions of this Bill of Lading and that there was not any loss of, or apparent absence of any part of said goods, which, if it had existed, could have been discovered upon making such examination before taking away or removal of said packages.

12. Liability of Carrier shall in no event be greater than that provided by Sections 4281, 4282 and 4283 of the Revised Statutes of the United States of America, and an Act of the Congress of said United States of America, entitled, "An Act relating to exemption of vessels, bills of lading, and certain shipments, duties, and rights in connection with the carriage of property"—the latter Act being dated February 13th, 1893, and Carrier shall have the benefit of all benefits granted to ship owner or carrier by all provisions of all sections of said Revised Statutes and all acts of the said Congress and all Statutes or laws of any State or place where claim hereon may be asserted, limiting or permitting a limitation of liability of ship owner or carrier by reason of the benefit of which law of any State or Central American Republics, further limiting or permitting a limitation of such liability.

13. If the owner of the vessel shall have exercised due diligence to make said vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from fault or negligence or error of the pilot, master or crew of said vessel, or other servants of the owner of said vessel, or from latent or other defect, or unseaworthiness of the vessel, whether existing at the time of sailing or at the beginning of the voyage, or during the voyage, but not discoverable by due diligence, the consignees or owners of the cargo shall not be exempted from liability for contribution in General Average due both to the vessel as well as to cargo, or for any special charges incurred, but, with the vessel owner shall contribute in General Average, and shall pay such special charges as such owner, his agents or disaster had not resulted from such fault, negligence, error, latent or other defects, or unseaworthiness. Passengers' effects, if any, not to contribute in General Average, but claims for passengers' effects ascribed to be allowed in General Average, let their proportion thereof, in such case (general) Average shall be settled under York-Antwerp Rules of 1890, OR OTHERWISE, as CARRIER interested shall elect.

14. The carrier, charterer, agent and/or owner of the vessel shall only be required to exercise due diligence to make the vessel seaworthy at the time of shipment, commencement of the voyage, or on the voyage, and if such due diligence has been used to make the vessel in all respects seaworthy and properly manned, equipped and supplied, neither the vessel, owner, agents, charterers nor the carrier shall become or be held responsible for damage or loss resulting from unseaworthiness, explosions, bursting of boilers, breakage of shafts, machinery or appurtenances, defect in the hull, machinery, boilers, rigging, gear, appurtenances, equipment or appliances, or from any other causes of what kind whatsoever.

IN WITNESS WHEREOF, the Agent of said STEAMER hath signed 2 BILLS OF LADING, one of which Bills of Lading being accomplished the others to stand void. And the Shipper has also signed this Bill of Lading.

Dated at Port Ludlow, 4th day of September 19 17.

For C. HENRY SMITH, INC., Agents.

All of the provisions above and on the REVERSE SIDE of this BILL OF LADING are hereby agreed to on the part of the SHIPPER.

C. HENRY SMITH
BY
Shipper.

Read Conditions of Special Contract on the Reverse Side Before Signing

Shippers must sign in full in ink, as a rubber stamp is used the name of the individual signing on behalf of the Shipper must be written.

RATES AND/OR MEASUREMENTS SUBJECT TO CORRECTION

FREIGHT

	CU. FT. AT	PER TON	
	CU. FT. AT	PER TON	
	LBS. AT	PER 2000	
179241	LBS. AT	PER 2000	7617. 75
	BD. FT. AT 42.50	PER 1000	
	AT		
		Freight	$
Loaded at Mills			
		Total	$ 7617.75

Stipulations and Conditions Referred to on Face Hereof and All of which are Agreed to by Shipper

19. It is agreed, that if said packages be hereon consigned otherwise than "to Order" or "to Order of Shipper" that this instrument, whether Receipt or Bill of Lading, shall not be negotiable nor carrier required to secure a surrender hereof as a condition of delivery (a consignee hereon consigned otherwise than "to Order" or "to Order of Shipper," the name of the party at place of delivery to be notified of arrival shall be given in the space provided for writing thereon. If any of said packages contain dangerous or inflammable or explosive material the shipper and consignee shall each be liable to Carrier for all loss and damage resulting therefrom and Carrier or its ship master may destroy any such package without liability therefor.

20. G. Henry Smith, Inc., reserves the right, in the event of any trouble arising between the Company and any of the Central American Republics, to store the cargo at the risk and expense of owner, shipper and/or consignee until such time as it may be convenient to carry same forward for delivery.

17. Manifest of goods must be furnished one day before ship's departure. Fines imposed on Steamers in any Mexican ports on account of such manifest not being furnished in due time, or errors or omissions therein to be paid by the consignee of goods. The expense of stamped paper and other Custom House charges for landing and delivering goods at port of destination must be paid by the consignee thereof. Shippers will sign this bill of Lading as such in the order right hand margin.

19. Carrier shall not be or be held liable for any loss of or from or damage to any of said packages that shall result from one of the following causes, viz:—acts of enemies, pirates, thieves, robbers, arrest or restraint of princes or rulers or people, attachments, acts or takings, or claims or restraint of government or municipal or de facto officers whether acting with or without lawful authority, riots, strikes, stoppages of labor, stoppage in transit or detention by any cause whatever, or delay on land or sea or fire before loaded on or after unloaded from vessel, or collapse of or destruction of or damage to wharf or pier or its contents, and any such loss or damage have received due diligence to make the same whole said packages be shipped to all ruppeas seaworthy, and properly manned, equipped and supplied shall Carrier be liable for any loss or damage that shall occur by reason of any fault or act of all of the following causes, to-wit, perils of the sea or other waters, fire on board vessel, barratry of master or crew, or other fault of master or crew, riots or strikes, if any, act or future latent defects, whether existing at time of shipment or at the beginning of the voyage, in or breakage or fracture of hull, shafts, propeller, fittings or fixtures, valves, pipes, machinery or appurtenances or from explosion, bursting of boilers, collision with vessel or object whether navigation be in charge of pilot or not, negligence, fault or error in navigation of vessel, fault or error in management of vessel or of its engines, wrecks, latent defects in hull, boilers, machinery, shafts, propeller, valves, cocks, pipes, tanks and their connections and this whether such fault or error be before or after sailing or during the course of the voyage, or without limiting the due diligence shall not be presumed, but the same must if claimed or alleged be proven by shipper.

20. Carrier shall not be or be held liable for leakage or wastage of contents of any package nor for breakage of glass or crockery or other fragile articles, shipped on first show that such package was of proper strength and in good condition, and that such contents were properly packed, marked and described, and delivered to the Carrier and that the package was, while in possession of Carrier, so crushed or broken as to indicate such loss or damage, and Carrier shall not be or be held liable for any such contents not specified herein, nor for loss from package or damage to property shipped in tierces, crates, casks, bags, baskets, boxes, bales, cases, bundles or in part of glass, crockery, queensware, porcelain, hollowware, pictures, picture frames, stoves or other castings, unless such breakage, leakage, loss or damage be the destruction of perishable property, stains to packages, contagion or moisture received from sea or other freight, effects of change, pressure, climate, heat, decay, rust, mold, vermin, twisting or bending of metals shipped loose or in bundles, loss or damage resulting from any burning of cargo, or from any cause, or combination of causes of proper marks or description, or from delay, unless it be first proven by shipper that such loss or damage was caused by negligence of Carrier, and that any fault or failure in proper loading, stowage, custody, care or proper delivery of said packages, when loaded hereon and up to the moment of delivery to consignee or consignee's agent if not so marked a delivery of full number of packages of like supposed contents without such regard to quality or actual contents of packages, and Carrier's responsibility and liability hereunder and if any of said packages shall be delayed or go astray or be discharged at wrong port or place or not delivered to consignee or consignee's agent, Carrier shall not be liable therefor. Live stock, all perishable property, all live freight, and all property packed in second-hand or worn sacks, or in sacks with a defective bag or owner's risk: and neither fault nor failure nor improper loading nor bad stowage nor improper custody nor want of due care nor improper delivery of or by Carrier shall be presumed but same must if alleged be proven by shipper.

21. Advance charges shall be repaid to, and prepaid freight shall be retained by, Carrier whether vessel or property be lost or not lost and in case of entire freight said if all freight and charges due Carrier be not paid after arrival of vessel, Carrier may sell said packages at either public or private sale and without notice to any on account of owner and apply proceeds in payment of freight and all other charges, and if same so realized be not sufficient to pay all charges due Carrier it may sue and be made, the shipper shall, on demand, pay all such charges or make good such deficiency as the case may be, and ship owner or master of any line shall not be liable for perishable property when in his opinion same would become decayed or worthless before it could be delivered as hereof, and Carrier shall have a lien on said goods for all freight thereon and all charges shall be paid by shipper.

22. The said packages shall be received on steamer at vessel's tackle immediately on her arrival at her said place of delivery without regard to weather; if consignee be not on hand to so receive packages or does not land same with usage of entire trade, lighterman or wharfinger or other party or person bollowed by Carrier to be responsible and who will take charge of said packages for consignee, and all such shall be delivered on account of owner and apply proceeds in payment of freight and all other charges, and if same so realized be not sufficient to pay all charges due Carrier it may sue and be made, the shipper shall, on demand, pay all such charges or make good such deficiency as the case may be, and ship owner or master of any line shall not be liable for perishable property when in his opinion same would become decayed or worthless before it could be delivered as hereof, and Carrier shall have a lien on said goods for all freight thereon and all charges shall be paid by shipper.

22. The said packages shall be received on steamer at vessel's tackle immediately on her arrival at her said place of delivery without regard to weather; if consignee be not on hand to so receive packages or does not land same with usage of entire trade, lighterman or wharfinger or other party or person bollowed by Carrier to be responsible and who will take charge of said packages for consignee, and all such shall be delivered on account of owner and apply proceeds in payment of freight and all other charges, and if same so realized be not sufficient to pay all charges due Carrier it may sue and be made, the shipper shall, on demand, pay all such charges or make good such deficiency as the case may be, and ship owner or master of any line shall not be liable for perishable property when in his opinion same would become decayed or worthless before it could be delivered as hereof, and Carrier shall have a lien on said goods for all freight thereon and all charges shall be paid by shipper.

23. The person who signed this bill of lading as accepting the terms thereof was authorized by the shipper to sign same for him and to bind him thereby. Carrier is not for any loss of or damage to said packages nor for any damage or loss suffered in connection therewith unless full written notice of such loss or damage be given Carrier at the sole cause of the same; and if Carrier become liable for any such damage or loss it shall not be liable to shipper for more than the actual insurance procured upon said packages. Collectors of customs are hereby authorized to grant a general order for discharge immediately ship to enter at custom house.

24. All claims of shipper consignee or other party in interest against Carrier or its vessels or the masters thereof for any loss of or damage to or conversion of or misdelivery of or delay in delivering said packages or any of them shall be in writing presented to Carrier or its Agent within sixty days from date of notice of any such loss or damage, etc., and arrival of vessel at port of delivery or if no such report in distress or carried newspaper mention of loss or stranding of such vessel on voyage shall such be and be deemed to be waived and all such claims be and be not presented within said sixty days, such claim shall be and by every court be held to have been released by shipper and by every consignee and Carrier is written notice of such claim as presented or to recover for any such loss or damage, etc., shall be instituted unless such claim be presented within said sixty days as aforesaid and such suit and summons be served on Carrier within sixty days from and after the day and date that such claim be so presented, and Carrier is written notice of such claim and no grant further time for the commencement of such suit the same may be commenced within the time so granted unless such claim be presented to Carrier within said said sixty days or within such further time so granted by Carrier shall be and by every court be held to be barred, and such claim be and be deemed to be waived and by complaint therein shall be so held to have been released by shipper, owner and consignee, and to be abandoned and barred.

26. All liability for loss or damage to goods shall be determined by their invoice cost plus freight. It is expressly agreed that the said Carrier shall not be or be accountable for waste, leakage, breakage, insecure packages, chafage to goods in bales, nor for loss or damage to goods, however caused, while in transit, or while in depot in contact or otherwise when properly stowed; nor for explosion of articles on freight or otherwise, nor from unavoidable accidents or causes expressly excepted, nor shall the goods named in this Bill of Lading are hereby valued at not exceeding $100.00 per package, and unless a different value be written and declared herein, the liability of the Companies therefor, in case of the total loss of all or any of said goods from any cause whatsoever, shall not exceed $100.00 and in case of the partial loss of or damage to any of said goods, the liability of the Carriers shall not exceed such proportion of said $100.00 per package as the value of such package shall bear to the sum of $100.00.

26. The shipper hereby represents and declares that the value of each package described on the face of this Bill of Lading does not exceed the sum of $100.00; unless the shipper shall enter a greater value in the space provided for that purpose at a different value; and upon such basis of valuation of said packages, the rate of freight thereon is adjusted.

27. If steamer be disabled on voyage, Carrier may forward said packages to port of delivery by other conveyance at option of its ship master and shall receive additional compensation for such service when tendered and without prejudice to its own vessels or those of steamers; and if salvage services be rendered to shipper on said packages by servants or vessels of Carrier, such service shall be in full paid for as if rendered by strangers.

28. Carrier is not and shall not be required to deliver said packages at port of delivery at any particular time or to meet any particular market or in time for any particular sale; and shipper shall notify consignee or other person or forwarder or carrier at place of delivery to there receive packages as discharged at ship's tackles, and packages may be discharged immediately on arrival of vessel at port or anchorage or wharf or landing.

29. Carrier's vessels are not warranted seaworthy save in so far only as exercise of due care by Carrier in the selection of its agents and superintendents and their attention to their duties and their selection and appointment of ship masters and officers and seglesors and crew have secured or may secure it.

30. Carrier shall not be liable for any loss of or any damage by fire to any of said goods capable of being covered by insurance.

31. The shipper shall be liable for any loss or damage to steamer, cargo, lighter or wharf, caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature, whether such shipper be principal or agent; and such goods may be thrown overboard or destroyed at any time without compensation. Extra charges, if any, for discharging, storage or other expenses on such hazardous goods declared or considered as such by civil or military authorities, must be borne by the shippers and/or consignees.

32. The steamer shall have a lien on the goods for all freight, primages or charges, and also for all fines or damages which the steamer or cargo may incur or suffer by reason of the illegal, incorrect or insufficient marking, numbering or addressing of packages or description of their contents. Invoices must be made out in accordance with the prescriptions and regulations of the Port, Customs or Consular authorities. Consular, Board of Health or other certificates required to accompany the goods are to be produced by shippers, and any detention, delay, charges or penalties incurred or occurring to cargo or steamer, owing to the want of such certificates, are to be borne by the shippers and/or consignees. Steamer or its owner will not be responsible for any delay in the delivery or in the non-delivery of goods not plainly marked with the port of destination, and the name and address of the consignee.

33. It is expressly stipulated that if said packages are to be lightered at any time or port or place, all lighterage services rendered shall be and be deemed to have been performed by an independent carrier or carriers, if such services be procured by Carrier they shall be deemed to be and to have been procured by shipper, and Carrier shall not be liable for any loss of or damage to said packages while in transit to carrier at any port or place where such lighterage be called, shall not be responsible for any act or neglect or default of carrier's liability after steamer be at anchor at or near to and port of delivery shall be that of warehouseman only, and said packages after unhooked from ship's tackles at such anchorage be at owner's risk.

34. Should, in the opinion of the master, the weather or sea be such as to cause an unusual delay in the discharge of the whole or any part of the goods herein mentioned, the ship may proceed to her next regular port of call, from where the overcarried cargo be regained at the expense and risk of shipper, owner or consignee. To cover the delivery and the part of discharge or transhipment or continuation therewith rendering or being liable to render the vessel liable to quarantine at any intermediate port, or in case of the master considering it dangerous to proceed into any port, either from epidemic or otherwise, unsafe or injurious to the further prosecution of the voyage, the goods may be landed at such port or put into a store or magazine, hulk, lighter or other receptacle therefor, at such or any other available port or place, at the risk and expense of the owner, shipper and consignee, all of which shall be proper, final delivery and all liability of the steamer or carrier hereunder shall thereupon cease. In the event of quarantine, the goods may be landed on arrival at port of delivery or transhipment into quarantine depot, hulk, lighter, or other vessel or receptacle necessary or proper for the safety of the goods at the risk and expense, or the master may carry the goods to the nearest convenient port and there land the goods at the risk and expense of them, and the consignee, if named, otherwise to shippers, shall be deemed, under this agreement, a due and complete delivery under this Bill of Lading, and the liability of the carrier shall cease. Any liberties thereon be held for all quarantine expenses incurred in consequence. If the ship is prevented from discharging the goods from any cause, including arrival too late for the goods, or is detained at quarantine, the goods may be forthwith, without previous notice, discharged into warehouses, discharged into consigees, discharged into hulks, lighters, at the risk and expense of shipper, owner and consignee, all and any of them, and the responsibility of the ship shall cease. The master shall be the agent of all the responsibility and expenses of the Carrier therefor, as carrier, bailee, or otherwise, and Carrier or the goods are delivered from the ship as aforesaid, or otherwise dealt with thereby or thereafter incurred and all increased cost of such delivery shall be paid by shipper, owner and consignee, and Carrier's lien on said goods for all charges of shipper, consignee, all said any of them, and there land the goods, as if at the original port of destination, at the risk and expense of shipper, owner and consignee, all and any of them, he, and they paying freight from the original port of discharge, and the Carrier or ship or any of them shall have a lien on said goods for all charges, and all increased cost for all increased cost of delivery. Carrier's freight from original point or port of discharge to destination shall be also then earned.

35 "Carrier" includes steckholders and vessels and masters thereof; "packages" means all property mentioned or referred to on face hereof; "shippers" and "owners" and "consignees" and "owners of said packages" and "holders of bills of lading other than Carrier; "Owner's risk" and "O. R." mean that shippers have agreed that Carrier shall not be liable for any loss or damage to goods from whatever cause, unless resulting from its negligence or wilful default.

36. Carrier's responsibility hereunder shall be several and shall end and its rights dependent on delivery accrue immediately it has made delivery as above provided; and Carrier shall not be liable for any subsequent loss or damage or delay of delivery. Carrier shall be shipper's agent for payment to other carrier of such freight as may be so collected, and shipper hereby waives any and freight of carrier or carriers to be paid to other than G. Henry Smith, Inc., shall, at option of such carrier, be deemed earned and fully due and payable. Shall be liable on all through shipments only for any loss occurring on the line of vessel and shall be payable by shipper whether such other carrier's vessel or said packages be thereafter lost or not lost and whether owners of said packages or Carrier shall be liable for delay or misdelivery or conversion or loss or damage unless it be shown that same occurred while said packages were in the possession of Carrier.

37. The rights and liabilities of all carriers by water shall be determined hereby; if Carrier's vessel or vessels or other carriers by carriage such delivery shall be made as shipper's agent, and not as carrier, and if such delivery be to other carrier or carriers shipper agrees to be bound by the stipulations and conditions of such transfer receipt, shipping receipt, or bill of lading as may be issued by such transfer or by such carrier for like transfer or carriage at place of such transfer.

38. Shipper shall have a lien on property landed at any port of call and for all expense to it resulting from shipper's failure to furnish proper Consular or Custom House papers, and for all fines or penalties from which Carrier may suffer on shipper's account, and all such dues and expenses shall be reimbursed to Carrier by consignee before said property shall be delivered by Carrier.

39. All expense of conserage and repairs of packages shall be paid by shipper.

40. Carrier's agent is hereby expressly granted the right and option of delivering the merchandise represented by this Bill of Lading to any service steamer, or of landing and storing said merchandise either in lighters, hulks or wharf, or in warehouses immediately upon the arrival of said steamer at the port of destination of said merchandise, without notice to and at the expense of consignee; and in the event of such delivery or storage the responsibility of Carrier in connection thereto shall be released from all further liability for loss or damage thereafter, whether arising from any cause.

41. That merchandise on wharf or in warehouse awaiting shipment, transhipment or delivery at end of line of Carrier's steamers, shall be at owner's risk of loss or damage by fire, and Carrier shall not be liable for destruction in whole or in part of the warehouse or the wharf; nor for any loss or damage to said merchandise, not happening through the negligence or representative; and further, that the Carrier shall not be liable for destruction of said merchandise by fire, before the arrival of or before delivery on or after unloading the same therefrom, unless such fire is caused by the design or neglect of the Carrier.

42. If the owner shall have exercised due diligence to make the steamer in all respects seaworthy and properly manned, equipped and supplied, and Carrier is hereby agreed that, in case of danger, damage or disaster resulting from faults or errors in navigation or in the management of the steamer, or from unseaworthiness of the steamer, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage provided such latent defect or unseaworthiness was not discovered or discoverable by the exercise of due diligence, the shipper, consignee or owner of the goods shall not be liable therefor, and no cargo shall, nevertheless, pay salvage, and any special charges incurred in respect of the goods shall be borne by the shipper, consignee or owner of the goods. And any agreement of any ineffects, losses or expenses of a General Average nature that may be made or incurred, whether for the common benefit, or by the advantage of the common peril, all with the same force and effect, and to the same extent, as if such danger, damage or disaster had resulted from accidents not caused by faults or errors in navigation or in the management of the vessel, or any latent defect or unseaworthiness.

43. Also that in case any steamer of the Carriers under this Bill of Loading be furnished by the said apparatus or otherwise, the ship owner shall not be liable for any loss, damage or deterioration resulting from its employment.

44. The several carriers shall have a lien upon the goods specified in this Bill of Lading for all services and charges of the same nature in connection with any of said goods, and for all loss, detriment or damage to the goods, or delay in the transportation thereof, imposing any liability upon any carrier, the carrier in whose actual possession the goods are at the time of such loss, damage, detriment or delay, shall alone be responsible therefor. The receipt of any carrier for the goods shall be prima facie evidence of its condition in which he received them in a suit against any other carrier.

44. To the extent of any cargo being accepted and carried with freight charges to collect at destination, and if through insufficiency of containers or any other cause whatsoever, such cargo or any part thereof is refused by the consenting carriers, and the Carrier having such cargo in possession at the time of such refusal is compelled to return the same to the port of origin or otherwise dispose of the same, all freight and other charges and all expenses of every nature whatsoever, that may be reasonably incurring in the rehandling and/or discharge of said cargo, shall be a charge and lien upon and against said cargo, payable by the shipper, owner and/or consignee, prior to taking delivery or affecting realization of such cargo.

U.S. PAT. OFF. CO. No. 6124
PLFF. SHEET BILL OF LADING
Filed July 19

(Defendant's Exhibit 4–S will be found on page 75 hereof.)

Defendant's Exhibit No. 5–B.

"PRIVATE.

"Kristiania, October 12th, 1917.

"C. Henry Smith, Esq.,

"San Francisco.

"Dear Sir,

"I refer to my letter of 4th inst. and have since received your cable of 5th, asking whether I would be disposed to sell my interests in the 'Pacific' and 'Baja' Company, which, however, I am not inclined to do at present, which I telegraphed you.

"I have also received your cable of 6th, sent via the Legation at Washington, reading thus:

> 'Regarding your cable to Hvoslef that I closed contract against instructions stop this is not correct stop refer my telegrams and your letter July twelfth,'

—to which I have had to reply as follows:

> 'Your telegram 6/10 stop you never replied to my cable 10/7 that contract fixed accordingly stop consequently my telegram to Hvoslef correct stop cabled Hvoslef again yesterday confer him.'

"When cabling, it is rather difficult to go into details, but I have now gone through our correspondence so many times that I find there can be no doubt about the fact that you did not cable me, in reply to my telegram of 10th July,x) that you had closed the contract. Put yourself in my place—what would you think if I did not cable you what I

(Testimony of John A. Bishop.)

was doing, when you might have been awaiting some important reply? The fact that you did not reply is *untilligible* to me. I really hope, for order's sake, that you will go through our letter correspondence, in which I have confirmed all the cables exchanged, and I cannot but think that you will then understand my position. Fancy, I received your letter of 24th July, in which you send me copy of the nitrate charter, about two months after it had been written. The letters, which I wrote you during that time, will clearly have shown you that I had no idea that you had fixed any new contract.

"Yours very truly,

"A. O. LINDVIG. [157—135]

x)

"P. S.—In case you had telegraphed me that you had closed with the reservation as mentioned in my cable of 10th July, the contract would have been in order."

On the inward voyage of the "Regulus" I shipped 1000 tons of coal belonging to me to the South.

Q. At the time you said you had shipped it $2 or $3 under the market rate.

A. I didn't say that positively. I could not recall. It is a matter of two years back.

Q. At any rate, on the date of the shipment the market rate was above the rate at which you had shipped it? A. That is correct. * * *

Mr. MOORE.—Now, what, if anything, did the

(Testimony of John A. Bishop.)

circumstance that this was the first voyage of the "Regulus" have to do with your going out and buying and shipping 1126 tons of coal on her?

A. Because the freight was very hard to get; was very scarce at that time; and I did not know when we would get the steamer from the shipping board. That was very indefinite, and then finally when the shipping board gave us permission to take the steamer they gave me only 21 days to load it and get it out of here. So that time was very essential to get the steamer away because I was very anxious. I thought that the shipping board might change its mind.

Q. Was or was not the agreement that you entered into with the Shipping Board dated March 30th, 1917, whereby they were to permit a transfer of this vessel to the Norwegian flag conditioned upon her starting on her first round trip voyage of three round voyages between here and Chile and South American, within 21 days after March 30th, 1917? A. Yes, sir. * * *

Q. Well, now, outside of those two items here, one shipment of gasoline by you and one shipment of cement, were there any other commodities that might be classified as general cargo shipped by you on any of these 26 voyages where somebody else was shipping the same commodity, leaving to one side the lumber now?

A. Yes, sir, there was the "Sinaloa" 9. That was apples.

Mr. MOORE.—He shipped 40 boxes of dried apples on the "Sinaloa" 9 at $27.50.

(Testimony of John A. Bishop.)

The COURT.—What date is that?

Mr. MOORE.—September, 1917.

A. Goetz Brothers shipped merchandise at $26.25.

Mr. MOORE.—Q. Goetz Brothers shipped merchandise at $26.25?

A. And another time shipped machinery at $27.50.

Mr. MOORE.—That would not be the same as apples, properly speaking. [158—136]

The COURT.—Apples are pretty good machinery for the stomach sometimes.

Mr. MOORE.—I was really referring to where somebody had shipped some commodity, not of the same classification.

A. I don't remember any case except this gasoline.

Mr. MOORE.—Except this gasoline we have spoken of, voyage 9, and the cement of the "Regulus," voyage 2? A. Yes, sir.

Q. Do you recall how many shipments of cement you made all told? A. Only one.

Q. You only shipped cement once on the whole 26 voyages? A. Yes, sir.

Q. Now, in respect to the lumber, I will ask you to look at "Regulus" voyage 1 and tell us what lumber you shipped there and to what place and what rates you paid?

A. I made one shipment to Arica.

Q. What rate did you pay? A. $30.

The COURT.—$30 a thousand or $30 a ton.

(Testimony of John A. Bishop.)

A. $30 a thousand feet board measure.

Mr. FRANK.—April, 1917. What port?

A. Arica.

Mr. MOORE.—It was this "Regulus" voyage 1.

Q. Now, will you state what other shipments of lumber were made on that vessel, and to what ports and at what rate?

A. One shipment by Thane & Company, $32, to Mejillones.

Q. Was Mejillones a regular port of call?

A. No.

Q. Was there any shipment of lumber made to a regular port of call on that voyage by anybody else?

A. Yes, sir. There was one by the Mohnes Commercial company to Callao.

Q. At what rate? A. $30.

Q. Now, take the "Baja California," voyage 6, and I will ask you to state whether you shipped any lumber on that voyage, and if so, to what port and at what rate. Is a rate to a port not a port of a regular call higher than the rate to the ports of regular calls? [159—137] A. Yes, sir.

Q. Well, she sailed March 6, 1916. "Baja California," voyage 6.

Do you care to look at these, or would I ask him the question?

Mr. FRANK.—All I want to do is to get the details in.

Mr. MOORE.—Q. Show him your shipment first, Mr. Smith. Now, I will ask you to state what ship-

(Testimony of John A. Bishop.)

ments of lumber, if any, was made by you on the "Baja California" voyage 6, sailing from here March 3d, 1916, to what port it was shipped by you and at what rate?

A. One shipment to Arica.

Q. At what rate? A. $20.

Q. Now, what other shipments of lumber were made on that same voyage, and to what port and at what rate?

A. To the Mohnes Commercial Company, $22. One shipment.

Q. And to what port?

A. Callao, one shipment at $20 for the same firm.

Q. And to the same port? A. The same port.

Q. One shipment?

A. One shipment for Grace & Company, the same port and the same rate.

Q. That is $20?

A. $20; another shipment for Grace & Company, the same port, $20. Then one shipment for Balfour-Guthrie for Talara Bay, $21.

Q. This shipment for Balfour-Guthrie at $21 to Talara Bay; is not Talara Bay an outside port of call? A. Yes, sir; it is.

Q. Now, I will ask you in respect to the "Baja California" voyage 10, whether or not you shipped any lumber on that voyage, and if so, where to, and at what rate?

A. One shipment to Antifogasta.

Q. At what rate? A. $30.

Q. Now, were there any other shipments?

(Testimony of John A. Bishop.)

Mr. FRANK.—Q. What date is that? That is "Baja California." What is the date of that?

A. May, 1917.

Mr. MOORE.—Q. Now, what other shipments of lumber, if any, were made on that voyage, and to what destination, and at what rate?

A. One to Callao by the Mohnes Commercial Company, $30. One more for the same firm, $30.

Q. You made one shipment to Antifogasta at $30 and they made two to Callao at thirty.

A. Yes, sir. [160—138]

Q. Now see if you made any shipment on the "Sinaloa," voyage 8, and if so, at what rate and to what port? A. One shipment to Arica.

Q. What rate? A. $30.

Q. Now, what other shipments of any lumber, if any were made on that voyages, and to what port and what rate?

Mr. FRANK.—Q. What is the date of that?

A. April, 1917. One shipment for the Mohnes Commercial Company, to Callac, $30.

Mr. MOORE.—Now, Mr. Smith do these two instances where you shipped the same commodity of general cargo for the same voyage as other shippers shipping that same identical commodity, and these four instances where you shipped lumber on the same voyages as other shippers also shipped lumber, comprise all of the occasions out of the 26 voyages when you happened to ship the same commodity on a given voyage when somebody else was shipping it also? A. Yes, sir.

(Testimony of John A. Bishop.)

Mr. MOORE.—I would like to invite your attention, your Honor, to this statement. It shows a shipment of lumber to the same port by Mr. Smith and other shippers throughout the period without a segregation as to the same voyages. These four instances already being given being the only ones on which it happened that he was shipping upon the same vessel as other shippers were.

The COURT.—He has already covered this.

Mr. MOORE.—There is only one feature of it. I want to ask him one question on it. This one shipment I wanted to invite his attention.

Q. You made a shipment of lumber upon the "Regulus" voyage 1. That is this first trip of the "Regulus" after she was transferred by the shipping board. You made a shipment upon the "Regulus," voyage 1—no, pardon me. It is the "Regulus" voyage 2. You made a shipment upon the "Regulus" voyage 2, September, 1917, to Valparaiso for $32 a thousand, did you not? A. Yes, sir.

Q. Well now, as a matter of fact, Mr. Smith, was that one shipment above or below what would have been the existing, going rate for new business or new lumber offered at the time of the sailing of that vessel?

Mr. FRANK.—What do you mean. Have you any destination?

Mr. MOORE.—No, no destination in my mind. I will put the question this way.

Q. Was that rate of $32 for lumber a thousand to Valparaiso above or below what would have been the

(Testimony of John A. Bishop.)

going market [161—139] rate on lumber at that time where business was freshly offered?

A. The going rate at that time was $32 plus 25 surcharges.

Q. Now, did that $32 include a surcharge?

A. No, I made one shipment that did not include the surcharge.

Q. Well, see if that is the shipment, that shipment to Valparaiso? A. Yes, sir.

Q. Now, I wish you would explain to the Court and jury how it is that that shipment of lumber to Valparaiso did not include the surcharge?

A. Well, this lumber was sold in April. The lumber was sold by me in the month of April.

The COURT.—Q. 1917?

A. 1917. And it was booked to go forwards on these steamers or on the "Regulus" voyage 2, June—July shipment. The contract is here of the booking.

Mr. MOORE.—That does not explain to me how the shipment did not take the surcharge?

A. Well, because it was booked before the surcharge went into effect, and it did not take the surcharge.

The COURT.—Q. What was this surcharge?

A. The surcharge was on account of the war rates.

Q. Imposed by the shipping board?

A. Imposed by the higher price for the voyage and other prices.

Mr. FRANK.—Just practically an increase in the rate, wasn't it? A. Yes.

(Testimony of John A. Bishop.)

The lumber shipment was sold to the Guggenheim interests. Before I sold it the Guggenheim interests had asked for competitive bids, and I was the lowest bidder. After they had purchased from me the Chilean Exploration Company (Guggenheim interests) were not interested in the space. They wanted to see out C. I. F. price; that means they wanted the stuff delivered in Chile, and I sold a cargo delivered at Chile. With my cargo on board the vessel was full, and that shut out other cargo that was offered.

The rate changed between the time I had assigned this space to myself and the time the vessel sailed from the port. [162—139] Arica is one of the regular ports of call, and Valparaiso is another. Arica is about 2,000 miles this side of Valparaiso.

The witness is then shown two bills of lading, one for Voyage 1 of the "Regulus," containing the coal shipment, and one for Voyage 2, containing the lumber shipment.

The material part of said bills of lading is the following:

Shipper, C. Henry Smith.

Consigned to the Andes Exploration Co., Valparaiso, Chile.

The amount shipped is 60,518 ft. B. M.

The rate allowed is $32.00,—$19,036.58.

Date of shipment, Port Ludlow, 4th September, 1917.

The other bill of lading is:

Plaintiff's Exhibit No. 7.

Shipper, C. Henry Smith.
Consigned to Braden Copper Co., Valparaiso, Chile.
The cargo carried was 751,350 board feet.
The rate, $32.00, or a total of $24,043.20
The date is, Port Ludlow, 4th September, 1917.
The total amount of that freight is $24,043.20.

(Plaintiff's Ex. 7.)

Q. Now, Mr. Smith, I show you another bill of lading on the same voyage, of the same vessel, and ask you if that is a shipment made by you?

A. Yes, sir.

(The bill of lading is offered in evidence.)

Plaintiff's Exhibit No. 8.

Shipper, C. Henry Smith, Consignee,
Order Not. Jorge D. Payot y Cia, Arica, Chile, in transit to Bolivia.
The port of discharge is Arica, Chile.
The amount shipped, 179,241 board feet.
The rate is $42.50.
The date is Port Ludlow, 4th September, 1917.
The total amount is $7,617.75

(Plaintiff's Exhibit 8.)

I was paying at least the market rate on that $42.50.

The witness is then asked to figure the difference between the $32 rate and the $42 rate on freight on the two cargoes, and says it is $8,524.61.

In the account "Governor Forbes" Voyage 3, to San Francisco, [163—140] September 14, 1917,

there is a charge of 7½% inward freight that means inward freight on the "Governor Forbes" $28,-637.73. The amount of the commission is $2,897.02.

The witness is asked to take those figures and tell us what the commission must have been on that freight at 5%, and replies that it would have been $1,931.89.

The difference between that and what I charged is $965.93.

The witness is then referred to the same account, the voyage No. 3 of the "Governor Forbes," September 14, 1917, and to the charges therein of 7½% coastwise freight, $2,562.88, commissions $192.27, and asked to figure out what this commission would amount to at 5% and deduct it from $192.27, and he says the difference is $64.08.

The attention of the witness is then called to the "Sinaloa" Voyage 7, Statement 14, dated San Francisco, February 1, 1917, and to the charge therein of 7½% on coastwise freight, amounting to $9,324.03, commissions $699.30 and asked to figure the commissions that would have been payable on that amount of freight at 5%, and answers, "The difference is $233.10."

His attention is then called to the account "Baja California," Voyage 10, Statement March 23, 1917, and to the charge therein of 7½% on coast cargo, amounting to $4,326.88, commissions $324.52, and asked to figure that at 5% and give us the difference and says the difference is $108.18.

His attention is then called to "Baja California" Voyage 11, which shows a charge of 7½% commis-

sion, $28142. Figured at 5% it would be $187.62, or a difference of $93.80.

Counsel admitted these figures were correct.

Defendant then testified that the total of the above difference in commission, that is, the difference between what [164—141]—he charged and 5% is $1.-479.37.

Plaintiff then introduces a letter from plaintiff to defendant, under date of December 21, 1917, which is marked Plaintiff's Exhibit No. 9, and which is as follows:

Plaintiff's Exhibit No. 9.

"Referring to my letter of the 14th inst., I beg to state that I have found the following error, in going through the account fro 'Governor Forbes,' 'Voyage 3';

7½% commission inward freight $38,637.73, which, of course, is meant to be 5%, and I shall thank you to pay the difference to my Frisco office, viz, $965.93."

"Kristiania, November 10th, 1917.

"C. Henry Smith, Esq.,

"Dear Sir:

"I duly received your various letters of 8th, 14th, 24th and 28th August, further of 1st and 25th of September, contents of which do not call for any comment on my part presently.

"Meanwhile I confirm my letter of 31st ult., in which I stated that I could not understand that there should only be a balance of $25,000 in my favor, on account of final settlement. I now learn by a cable received from Mr. Lindvig that about $64,000, have been paid out of 'Regulus' net earnings, but I have

received no advice as to what has been done with the following balance, according your statements: $41,523.86, balance from 'Baja C.,' voyage 11, $9,957.37, balance from 'Gov. Forbes,' voyage 2.

"Respecting the Nitrate contract, I wrote you on the 6th inst., and I do not need to add anything now that I learn from Mr. Lindvig that you intend to retain 5 per cent, on whole nitrate contract, against which I earnestly protest.

"The position of the Baja C. is not so satisfactory as it might be expected. This is due to very high taxes of war, which the Company will have to pay, and besides, the expenses have been very high. There will probably be no more dividend for 1917 than 25 per cent, at the close of the year. These 25 per cent, will probably be distributed shortly. In case you should care to sell your shares, you may let me know. I mentioned this, as you cabled me on the 5th October, asking whether I would sell my interests in the Baja Company.

"Yours very truly,
"A. O. LINDVIG."

Exhibit "D."

"January 16, 1915.

"A. O. Lindvig, Esq.,
"Christiania, Norway.

"Dear Sir:

"We beg to hand you herewith statement of 'Baja [165—142] California' on the outward trip to San Francisco, and in support of the items given, also invoices and receipts.

"The 'Baja California' cleared from here Christmas Eve, Dec. 24th, for Seattle, loading southbound as already reported to you by cable. She underwent the necessary changes with regard to the oil burning system, and also took on, all told, 1720 barrels oil. We have made a contract with the Standard Oil Co., at a very favorable rate, viz: 65 cents per barrel, which we have been informed is the lowest price that has been made in San Francisco for four years. The steamer will probably burn about 75 barrels per day, and as the price of coal is $7.25 per ton, you may figure what saving may be effected by burning oil figuring that she burns 15 tons of average good coal per day. The cost of the change in connection with the oil burning system as we have advised is about $1269.94, and as soon as we have the specified invoice, we will advise you further in that connection.

"On the Panama Canal invoice, we have you credit for telegrams, as these should be paid out of our allowance per month covering such expenditure. We hardly believe, however, that $45.00 per month would cover this cost, as the cost of telegrams for us run up very high, and some of our agents insist also on having their telegrams paid, so we are out considerable every month. On certain freight we are also compelled to pay 2½ per cent., and some firms, both steamship companies and shippers, insist on 5 per cent. In the latter case we would of course be out the entire commission if we accepted such freight."

Exhibit "E."

"Kristiania, 8th February, 1915.

"Messrs. C. Henry Smith, Inc.

"San Francisco.

"Dear Sirs:

"I duly received your favors of the 15th and 16th, also telegram of the 5th inst., from which I note that you can now obtain 6 dollars per ton for the 30000 tons shipment over one year —

"As telegraphed you in reply I consider this quantity too large for such a period as it would of course be quite impossible to manage it, with only two steamers. I added in my telegram that the S/S 'Henry Ibsen' is just reported having been closed with nitrate from Chile to U. S. at 50/–per ton, so you will observe that the freights are advancing also in that direction.

,"I am very glad to note that you have been able to make a contract with the Standard Oil Co. at 65 cents per barrel, which is very favorable.

"The British Government now insists upon receiving a bank guarantee for the half of the ships value. That the ship will not be used in the service of the enemies of the U. S. or their allies, and that she will not carry any goods, which may be destined for or transshipped to the said enemies. I am now trying to induce the British authorities to waive this demand, but am afraid my application will not be complied with, and that I shall have to arrange [166—143] for the bank-guarantee required.

"Yours truly,

"A. O. LINDVIG."

Exhibit "F."

"December 28, 1915.

"A. O. Lindvig, Esq.,

"Christiania, Norway.

"Dear Sir:

"S/S 'Sinaloa':—

"In connection with the statement rendered by the Anglo American Steamship Agencies, Inc., for the 'Sinaloa' loading, we have in the meantime, received a refund for the wharfage from the Panama Canal of $66.25, which we will include in our next statement to you.

"A further refund due the steamer is as follows:

For Tug Service	$3.00
For Pilotage	27.00
For Handling Lines	10.00
For Handling Ashes	12.50
All told	$52.50

"We have written twice to Alaska to the Government Commissioner there, for the dead freight due, but have as yet not heard from him. It would of course, take a little longer time to get this refund from the Government as it would otherwise, but you may rest assured that we are doing all we can to get this money as soon as possible.

"As to commission charged on expenses paid by the agents, it is in some instances customary to do so; to charge $2.50 or even 5 per cent, on such disbursements. For instance, if the agent in South America would advance money for a steamer, which may not

be paid for 30 or more days, he would of course be entitled to some remuneration for this service. We are, of course, at all times trying to avoid unnecessary expenses, and we shall in the future, as far as the Northern ports are concerned, have our own men attend to disbursements there.

" 'Archer'

"The vessel is now out in the stream in San Francisco Bay and we are at this time drawing up specifications for repairs and for overhauling. We shall advise you in the next few days as to the whole arragement.

"The whole quesion is, whether we can obtain an engine large enough for the vessel. We telegraphed you about an engine being on exhibit now at the Panama Fair. This engine is 200 H. P. and the manufacturers claim that it can develop even 225 H. P. which would give the vessel a speed of 7 knots loaded. An accurate estimate in that respect however, is hard to obtain. It was our intention to change the vessel into a four-mast Schooner which [167—144] would increase her sailing power and make a few changes to give her more space for cargo. As we already have advised, she now has a Coal-Gas Producing Engine and we are also ascertaining whether it may be practicable to overhaul and repair this engine and operate one or two trips until we get an oil engine, instead of buying coal in Mexico, which is at present very high. We have been informed that it has sold up to $22.00 per ton and in that case she would not be very economical down there.

"We have been offered by several parties, a higher price than we paid for her, and one man offered today $27,000.00 for her as she is today. In the Mexican run she would we believe, be suitable, although the insurance would be considerably higher than on the steamer. The steam Schooners running down there at the present time, pay from 5 per cent to 8 per cent, and the shippers have asked us many times to obtain a steamer for the trade. We note that you mention the S. S. 'Progresso,' which would, of course, be entirely suitable. She is the exact size for the trade: being also an oil burner she would be very economical here. As the Panama Canal is now open for vessels of this size, she could get through at any time.

"We have been offered freight northbound from Panama Canal to Alaska, or even touching the Central American ports of call northbound, we could fill her up, or we could even get freight southbound from Panama for Nitrate ports. At all events if you are still interested in sending her out here, we would surely make good use of her in the Central American trade. Kindly send us a cable if you are disposed to send her out.

"S/S 'Rizal.'

"This steamer is now, so far as we understand, altogether out of the market and we cannot get the owners to reply to any proposition.

"S/S 'Mazatlan.'

"She was changed to American Registry and is now being operated under the name of "Edna."

At present she is in Balboa on the way to South American ports with general cargo.

"S/S 'Sinaloa,' Voy. No. 3.

"She is now fully booked for this trip with lumber and flour, Callao and Arica. Lumber rates are at present very good, being up to $22.00 per 1,000 feet. Her total freight will amount to about $35,000.00. We are also closing the 'Baja California' for Guayquil and Talara Bay, where oil is obtainable and Callao, as well as Arica—lumber and flour at similar rates.

"Yours very truly."

[168—145]

Exhibit "G."

"Kristiania, May 3d, 1917.

"Messrs. C. Henry Smith, Inc.

"San Francisco,

"Dear Sirs:

"Since writing you on the 21st inst. I have received your statements dates 22nd March, etc., referring to the 'Governor Forbes,' 'Baja California,' and 'Regulus.' I shall revert the same, after having gone through our accounts.

"In the meanwhile I have noticed, at a glance, that the cost of repairs for the former steamer have been frightful and very much higher than what you wrote on the 15th February.

"Nitrate Contract. I received your cable of 30th ult.

> " 'Believe Dupont inclined make new contract stop Wilmington manager will be here shortly stop will cable best rate obtainable stop last

charters sailing ships twelve dollars stop please cable if in order negotiating.'

and have replied today as follows:

"'Consider twelve dollars too low if better not possible suggest fixing contract for Baja Sinaloa Regulus for one year about 35000 tons our option up to 50000 tons at fifteen dollars clean terms.'

As the present rate for sailing ships *in* $12, I consider that the rate for steamers must be at least $15. I now await to hear what you have been able to do, on basis hereof.

"S. S. 'Governor Forbes.' You state in your cable of 30th ult. that she has sailed for San Francisco. Please note that I cannot find having received any advice of this vessel's movements since she arrived at Guayquil on the 13th April.

Cable to Mr. Lindvig. I note that same has been delivered.

"Commissions to Duncan Fox &c., Referring to an account from Duncan Fox, &c., dated Lima, 20th December, referring to S. S. 'Sinaloa.' I note that I have been debited with 7½% commission. As far as I can judge by your letter of 23rd December last year, the said firm has practically agreed to charge only 2½% commission for themselves, and consequently I consider that the total commission ought not to exceed 5 per cent, in such cases. Please let me hear how you look at this.

"Statement dated 22nd March. You have debited 'A. O. Lindvig' for several items, for instance,

'Guilde Publishing Co.,' &c. I do not know what this refers to.

"Yours faithfully,

"A. O. LINDVIG.

"P. S.—Nitrate Contract. War Insurance. As the war insurance premiums have lately been increased heavily—for instance 100 per cent, as far as the W. C. of America is concerned—I am obliged to stipulate that any further advance decided by the Norwegian War Insurance will have to be paid by charterers. The present rate is 4 per cent, per annum. I shall be cabling you re this." [169—146]

Exhibit "H."

"June 28th, 1917.

"A. O. Lindvig, Esq.,
"Kristiania, N.

"Dear Sir:

"We are in receipt of your letters of May 1st, 3rd, and 10th, together with duplicates, and contents noted.

"Sinaloa Claim—Treasury Dept.

"We have a statement of the decision of this case, but we have filed our petition for a rehearing in the matter, and expect to have a settlement as to how the case stands in the near future.

"Sinaloa Aground at Cape Blanco.

"We beg to refer you to our cables exchanged in this connection, and may say that we have had quite some difficulty in assembling salvage equipment. There is no salvage company on this coast excepting the British Columbia Salvage Co. at Victoria, owners

of the steamer 'Salvor.' This company has only the one boat, which happened to be engaged in connection with another wreck of the C. P. R. SS. Co. in the North.

"We tried very hard to get a suitable boat for the salvage operation, both in Seattle and Portland as well as in San Francisco, but unfortunately at this time of course, every vessel is engaged some way or other owing to the position of the freight market, and no one seems to be inclined to lend any of their boats for the purpose of salving the 'Sinaloa,' fearing they may loose their vessel in doing so.

"We chartered the SS. Greenwood at the suggestion of Capt. Curtis, who is at the wreck representing the Underwriters here, but engaged by us solely for this purpose. The Greenwood, however, after having loaded all the gear and equipment necessary, broke down outside the Golden Gate and had to return to port. In the meantime we engaged the Phoenix for the same purpose, and also a barge to tow the equipment up to Cape Blanco, and we are now ready for sea with the second expedition.

"We have not been able to fix the insurance and we therefore cabled you to place same at the best possible figure. We have also cabled London to place the insurance there if possible.

"The situation so far as the 'Sinaloa' is concerned, is practically the same. However, last Sunday a rough gale moved the ship sixty yards nearer shore. Capt. Curtis, however, telegraphed us that there is a very good prospect to save the vessel, and the nitrate in the forward holds has not been dis-

charged yet, as it was not deemed advisable to do so before pumping out the water in the after holds and until the moorings are laid.

"We appointed Johnson & Higgins average adjusters on the Hull as they presented evidence to me that they represented the Skuld Association of Underwriters, and they assisted in every way possible. In the meantime, however, we received your cable stating that Wilcox, Peck & Hughes should attend to the adjustments for the Hull Underwriters, and we so advised Johnson & Higgins, who have entirely withdrawn. We shall now keep you advised by cable as to our further movements in the salvage work.

"Transfer Money.

"Regarding the money that we have deposited in the First National Bank to your credit, we have cabled you that about $45,000 belongs to the Baja California Co., as shown on the [170—147] statements which no doubt are in your possession now.

"NITRATE CONTRACT.

"We cabled you a few days ago that Mr. Simonton of the Dupont Co. is now in the City, and prepared to make a new contract with us for next year's requirements in the amount of 40,000 tons, 10 per cent. more or less. The rate he intimated was $12.50 pr ton, which is a little better than we indicated in our cable of April 30th. At the time we were cabling on this matter in April, I see that we did not receive your cable suggesting 35,000 tons or our option 50,000 tons at $15.00.

"Of course, there are certain advantages for carrying nitrate for the Dupont people, as we can always

make arrangements about discharging cargo at this port or up north as the situation would require, in case of labor troubles or otherwise; and also, as the new steamer is going, as we understand, into this nitrate business, the Dupont people may give us certain assistance in getting the steamer earlier than we had at first anticipated.

"Commissions to Duncan Fox & Co.

"We wrote you some time ago in connection with the commission that we had allowed sub-agents in South America. We find that under certain circumstances we cannot obtain any cargo from certain firms unless we allow 5 per cent. We have, so far as Duncan Fox & Co. are concerned, arranged with them for a commission of 4 per cent., which leaves us 3½ per cent, to cover our own expenses, etc., and we do not believe this is exorbitant in any way.

New 6000 Tonner.

"We are, of course, keeping in touch with the situation, and may inform you at this time that so far as we understand the Government will take over all contracts, and we do not believe any transfer of this vessel can be effected in the way that you suggest. We may, however, be able to arrange with the United States Shipping Board, that the vessel be operated under the American Flag for the present owners, in the nitrate trade. I would like to hear from you eventually by cable, your attitude in this connection." [171—148]

The Court erred in giving the following instruction to the jury:

"This cause has taken a course which calls upon

me at this time to direct you to find a verdict in favor of the plaintiff. It is not essential that you leave your seats; you may select one of your number as foreman and have him sign the verdict."

To the giving of said instruction defendant duly excepted and said exception is here designated as

EXCEPTION No. TWENTY-ONE.

The Court erred in refusing to give the defendant's instruction number one, requested by defendant, and reading:

"If you find that defendant acted as agent for plaintiff in the transactions involved in this case, defendant has a right to deduct from the claim of the plaintiff any lawful claims arising out of his agency, by way of compensation, advances or reimbursements, and interest on such advances."

To the refusal of the Court to give said instruction defendant duly excepted and said exception is here designated as

EXCEPTION No. TWENTY-TWO.

The Court erred in refusing to give instruction No. 2, requested by defendant, and reading:

"In order to entitle defendant to remuneration for services rendered as agent, by way of commissions or otherwise, it is not necessary to show an express request for the services by plaintiff as defendant's principal, but such a request may be implied from the circumstances disclosed by the evidence."

To the refusal of the Court to give said instruction defendant duly excepted and said exception is here designated as

EXCEPTION No. TWENTY-THREE.

The Court erred in refusing to give instruction No. 8, requested by the defendant, and reading: [172—149]

"In case you shall find that the defendant in any particular instance, acted as plaintiff's agent without any authority to so act, or in excess of the authority given by plaintiff, but that defendant's acts were thereafter ratified by plaintiff, or that the plaintiff accepted the benefit of defendant's services, I instruct you that defendant is entitled to the same compensation and remedy for performing said acts as if he had been duly authorized to perform the same."

To the refusal of the Court to give said instruction requested by the defendant, defendant duly excepted and said exception is here designated as

EXCEPTION No. TWENTY-FOUR.

The Court erred in refusing to give instruction No. 9, requested by the defendant, and reading:

"If you find that defendant has performed on his part all the acts necessary to the accomplishment of a particular result, such as the freighting of 40,000 tons 10% more or less, of cargo in plaintiff's vessels, for and on behalf of the DuPont de Nemours Powder Company, defendant cannot be deprived of his right to the entire compensation by the refusal or neglect of the plaintiff to thereafter perform the necessary acts on his part, whereby the contemplated result is defeated or only partly executed."

To the refusal of the Court to give said instruc-

tion defendant duly excepted and said exception is here designated as

EXCEPTION No. TWENTY-FIVE.

The Court erred in refusing to give instruction No. 10, requested by the defendant, and reading:

"The failure, refusal or inability of plaintiff to carry out the complete contract for the transportation of $40,000 tons, 10% more or less, of cargo for the DuPont de Nemours Powder Company does not defeat defendant's right to full compensation for negotiating this contract, nor is this right defeated by the fact, if it be a fact, that plaintiff and the Du Pont de Nemours Powder Company subsequently modified, rescinded or cancelled the contract or a part thereof by mutual consent."

To the refusal of the Court to give said instruction defendant duly excepted and said exception is here designated as

EXCEPTION No. TWENTY-SIX.

The Court erred in refusing to give instruction No. 11, requested by the defendant, and reading: [173—150]

"If you find that plaintiff carried out or offered to perform the agreement with DuPont de Nemours Powder Company, or a part of said agreement, with knowledge of the whole agreement, I instruct you that such conduct on the part of plaintiff constitutes a ratification of the whole agreement, and that defendant is entitled to compensation for procuring the said agreement."

To the refusal of the Court to give said instruction

defendant duly excepted and said exception is here designated as

EXCEPTION No. TWENTY-SEVEN.

The Court erred in refusing to give instruction No. 12, requested by the defendant, and reading:

"If you are satisfied that defendant was originally appointed to act as general agent for plaintiff on the Pacific Coast, the facts shown by the evidence must be liberally construed in favor of a ratification by plaintiff of defendant's acts, and you may consider very slight circumstances and small matters as sufficient to raise a presumption of ratification, especially if you should also find that the defendant's acts were for the benefit of the plaintiff."

To the refusal of the Court to give said instruction defendant duly excepted and said exception is here designated as

EXCEPTION No. TWENTY-EIGHT.

The Court erred in refusing to give instruction No. 13, requested by the defendant and reading:

"If you find that defendant was to receive commissions for contracts made for the benefit of plaintiff and that during the term of his agency, he procured contracts for the benefit of plaintiff, I instruct you that defendant is entitled to commissions not merely on the contracts which were performed before the termination of defendant's agency, but that defendant is also entitled to commissions on all contracts secured by him and performed, or to be performed, by plaintiff subsequent to the termination of defendant's agency."

To the refusal of the Court to give said instruction defendant duly excepted and said exception is here designated as

EXCEPTION No. TWENTY–NINE.

The Court erred in refusing to give instruction No. 14, requested by the defendant, and reading:

"The bill of particulars filed by the plaintiff herein is to be considered as an amplification of his complaint and said bill of particulars specifically disputes the following items in the defendant's accounts; [174—151]

1.	Remuneration re contract of 'Regulus'.....	$ 6,000.00
2.	Remuneration re contract 'Romulus'.	10,000.00
3.	Commission on purchase of 'Governor Forbes'.....	6,800.00
4.	Commission on 'Sinaloa' salvage....	3,165.27
5.	Commission Dupont Powder Co.....	25,517.80
6.	Commission in inward freight of 'Governor Forbes'.....	2,049.65
7.	Retention of balance stated by Mr. Smith as an estimated amount for procuring bookings of freight prior to October 1, 1917.....	5,000.00

"The above-mentioned disputed items total the sum of $58,532.75, and these are the items which are to be considered and passed upon by you; all other items in the defendant's accounts are assumed to be correct."

To the refusal of the Court to give said instruction defendant duly excepted and said exception is here designated

EXCEPTION No. THIRTY.

The Court erred in refusing to give instruction No. 15, requested by the defendant, and reading:

"The defendant is entitled to recover a commission on the purchase of the 'Governor Forbes,' notwithstanding he may have entered into an agreement for the purchase of said vessel in November, 1916, and notwithstanding the payment of her purchase price may have been completed in the spring of 1917, provided you believe from the evidence that the services rendered by the defendant in connection with the cablegrams exchanged between him and the plaintiff entitled him to such a commission and provided you believe that the omission to enter said commission upon any of the accounts presented to the plaintiff prior to October 1, 1917, was due to inadvertence and mistake."

To the refusal of the Court to give said instruction defendant duly excepted and said exception is here designated

EXCEPTION No. THIRTY-ONE.

The Court erred in refusing to give instruction No. 16, requested by the defendant, and reading:

"The Court instructs the jury to find in favor of the defendant as to the item of $12,050 referred to in plaintiff's bill of particulars, for the details of which it is therein stated that the plaintiff has sent to Christiania."

To the refusal of the Court to give said instruction defendant duly excepted and said exception is here designated [175—152]

EXCEPTION No. THIRTY-TWO.

The Court erred in refusing to give instruction No. 17, requested by the defendant and reading:

"I charge you that the agency contract entered into by and between A. O. Lindvig and C. Henry Smith on June 29, 1914, had sole reference to C. Henry Smith acting as the agent for the 'A/S/Baja California' in the operation of steamers between Mexican, Central American, West Coast of United States and British Columbia ports; and I instruct you that the services rendered by C. Henry Smith in contracting for, and supervising the construction of the 'Romulus' and 'Regulus' and in purchasing the 'Governor Forbes,' were not included within his duties as agent under said contract of June 29, 1914."

To the refusal of the Court to give said instruction defendant duly excepted, and said exception is here designated

EXCEPTION No. THIRTY-THREE.

The Court erred in refusing to give instruction No. 18, requested by the defendant, and reading:

"Where there is a written contract between a principal and an agent providing for a certain compensation to the agent for the performance by him of the services required or contemplated by the contract, and services are rendered by the agent in addition to those required or contemplated by the written contract and in connection with transactions not included in the matters to be attended to by the agent under the written contract, and such extra

services are of such a nature and were rendered under such circumstances as to imply a promise on the part of the principal to pay for the same, then and under such circumstances, I charge you that the agent is entitled to recover the reasonable value of such extra services."

To the refusal of the Court to give said instruction defendant duly excepted, and said exception is here designated

EXCEPTION No. THIRTY-FOUR.

The Court erred in refusing to give instruction No. 19, rquested by the defendant, and reading:

"Whenever the circumstances under which services were rendered and the character of the services performed, create a legal liability to pay on the part of the person for whose benefit the services were performed, the law implies a promise to pay for such services; and the request necessary to support such promise may be inferred from the beneficial nature of the services and the circumstances of he transaction." [176—153]

To the refusal of the Court to give said instruction defendant duly excepted, and said exception is here designated

EXCEPTION No. THIRTY-FIVE.

The Court erred in refusing to give instruction No. 20, requested by the defendant, and reading:

"As to the item of $2,049.65 as defendant's commission on the inward freight of the 'Governor Forbes,' I charge you as a matter of law that your verdict should be in favor of the defendant,"

To the refusal of the Court to give said instruction defendant duly excepted, and said exception is here designated

EXCEPTION No. THIRTY-SIX.

The Court erred in refusing to give instruction No. 23, requested by the defendant, and reading:

"I instruct you that it is not necessary for the defendant to prove an express promise by the plaintiff to compensate the defendant for his services in connection with the contracting and building of the 'Regulus' and 'Romulus.' It is sufficient for the defendant if he proves in this behalf that the services rendered by him in connection with the contracting and building of said vessels were outside of the scope of his duties under the agency contract of June 29, 1914, and that his services in connection with the contracting and building of said vessels were beneficial to the plaintiff and were of such a nature and rendered under such circumstances as to imply a promise upon the part of the plaintiff to pay for said services."

To the refusal of the Court to give said instruction defendant duly excepted, and said exception is here designated

EXCEPTION No. THIRTY-SEVEN.

The Court erred in refusing to give instruction No. 24, requested by the defendant, and reading:

"If you believe from the evidence in this case that prior to the termination of the defendant's agency the employees of the defendant engaged cargo for sailings scheduled to occur within a few days sub-

sequent to the termination of the defendant's agency, and that upon the termination of the defendant's agency his former employees removed to the newly established office of the plaintiff all records of such cargo engagements, and that thereafter, when demand was made by defendant upon the plaintiff for a statement of the cargo booked prior to [177—154] the termination of the defendant's agency, the defendant at first denied that any cargo excepting a shipment of lumber by the defendant had been booked prior to the termination of the defendant's agency, and that thereafter and as a result of the defendant's demands the plaintiff admitted that some cargo had been booked prior to the termination of the defendant's agency, then, and under such circumstances, I charge you that the burden of proof is upon the plaintiff to show that the defendant has retained as payment of his commission on freight booked prior to the termination of his agency, an amount greater than the defendant is entitled to as his commissions upon the freight engaged prior to the termination of the defendant's agency."

To the refusal of the Court to give said instruction defendant duly excepted, and said exception is here designated

EXCEPTION No. THIRTY-EIGHT.

The Court erred in refusing to give instruction No. 25, requested by the defendant, and reading:

"Although defendant's compensation as agent for plaintiff is specified in the contract of employment, you may nevertheless find, if you believe it to be the

fact, that defendant rendered services to the plaintiff or a character different from that provided for in said contract of employment; and if you so find, then I instruct you that defendant is entitled to a reasonable competition for such services."

To the refusal of the Court to give said instruction defendant duly excepted, and said exception is here designated as

EXCEPTION No. THIRTY-NINE.

The Court erred in refusing to give instruction No. 26, requested by the defendant and reading:

"I instruct you that the defendant is entitled to a reasonable compensation for all services not covered by the contract of June 29, 1914. In determining the value of such services you are not confined to the amounts retained by the defendant in the respective instances, but may consider the value placed by defendant upon such services as one of the circumstances determining, with all the other circumstances surrounding such services, what would be a reasonable compensation, which may be less or greater than the same retained by defendant. In case the sum total of the amounts determined by you to be reasonable in each instance aggregates a sum equal to or greater than the sum of $70,582.72, your verdict must be for the defendant." [178—155]

To the refusal of the Court to give said instruction defendant duly excepted, and said exception is here designated as

EXCEPTION No. FORTY.

To the refusal of the Court to give said instruction No. 27, requested by the defendant, and reading:

"I instruct you that, under the contract of June 29th, 1914, the defendant is entitled to a reasonable commission on the freight earned by the steamers of the Baja California Company in performing the contract with the Du Pont de Nemours Company for the transportation from the Republic of Chile to San Francisco, California, and elsewhere of 40,000 tons, 10% more or less, of nitrate."

To the refusal of the Court to give said instruction defendant duly excepted, and said exception is here designated as

EXCEPTION No. FORTY-ONE.

The Court erred in refusing to give instruction No. 28, requested by the defendant, and reading:

"I instruct you that the contract of June 29th, 1914, between plaintiff and defendant was an agreement with regard to a proposed steamship line to operate steamers between Mexican and Central American ports, and West Coast of United States as well as British Columbia, and that such agreement does not govern the value of services connected with a steamship line operating steamers between South American ports and the West Coast of the United States or British Columbia. That defendant is entitled to a reasonable compensation for any services performed by him for plaintiff in connection with steamers plying between ports of the United States or British Columbia and South American ports."

To the refusal of the Court to give said instruction defendant duly excepted, and said exception is here designated as

EXCEPTION No. FORTY-TWO. [179—156]

In the District Court of the United States, in and for the Northern District of California, Second Division.

No. 16,124.

A. O. LINDVIG,

Plaintiff,

vs.

C. HENRY SMITH,

Defendant.

Certificate of Judge to Bill of Exceptions.

The foregoing bill of exceptions is a true bill of exceptions, correct in all respects, and is hereby approved, allowed, settled, certified and may be filed with the clerk of this court and make a part of the record herein, subject to the objection and exception at this time by plaintiff to the action of the Court in certifying the same.

Dated this 9th day of May, A. D. 1921.

(Sgd.) WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed May 9, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [180]

In the District Court of the United States, in and for the Southern Division of the Northern District of California, Division Two.

No. 16,124.

A. O. LINDVIG,

Plaintiff,

vs.

C. HENRY SMITH,

Defendant.

Petition for Writ of Error.

To the Honorable, The United States District Court Aboved Named, and to Honorable WILLIAM C. VAN FLEET, Judge Thereof:

C. Henry Smith, the defendant in the above-entitled action, feeling himself aggrieved by the verdict of the jury and the judgment entered against him in the above-entitled cause on the 13th day of June, 1919, and claiming that in the trial of said cause certain errors were committed to his prejudice, all of which appear in detail in the assignment of errors filed herewith, comes now by Andros & Hengstler, and Goodfellow, Eells, Moore & Orrick, his attorneys, and petitions said Court for an order allowing him, said defendant, to prosecute a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided; and that an order be made fixing the amount of security which the said defendant shall give and furnish upon said writ of error; and that

upon the giving of such security all further proceedings in this Court be suspended [181] and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit. And your petitioner will ever pray.

Dated San Francisco, California, December 11, 1919.

ANDROS & HENGSTLER,
GOODFELLOW, EELLS, MOORE & ORRICK,
Attorneys for Defendant.

[Endorsed]: Filed Dec. 12, 1919. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [182]

In the District Court of the United States, in and for the Southern Division of the Northern District of California, Division Two.

No. 16,124.

A. O. LINDVIG,
Plaintiff,

vs.

C. HENRY SMITH,
Defendant.

Assignment of Errors and Prayer for Reversal.

C. Henry Smith, the defendant in the above-entitled action, makes and files the following assignment of errors herein to the United States Circuit Court of Appeals for the Ninth Circuit.

The District Court erred in each of the following rulings made by it on the trial of said action:

1. In sustaining plaintiff's objection to the following question propounded by defendant to the witness C. Henry Smith:

> "Q. What was the market value of the 'Regulus' at the time she was completed, on the first day of April, 1917?"

2. In sustaining plaintiff's objection to the following question propounded by defendant to C. Henry Smith:

> "Q. What was the market value of the Romulus' at the time of her completion?"

3. In sustaining plaintiff's objection to the following [183] question propounded by defendant to the witness C. Henry Smith:

> "Q. I will ask you to state whether or not Mr. Lindvig at any time claimed that you were not entitled to your commission on the 'Regulus' until the time that he filed this suit?"

4. In sustaining plaintiff's objection to the following question propounded by defendant to the witness C. Henry Smith:

> "Q. I will ask you to state whether or not Mr. Lindvig at any time either said to you verbally or in writing that you were not entitled to your commission on the 'Regulus' prior to the first day of December, when a question was raised in regard to that matter in a letter written by Mr. Frank, which is carried into the bill of particulars?"

5. In sustaining plaintiff's objection to the following question propounded by the defendant to the witness C. Henry Smith:

"Q. What was the value of the 'Governor Forbes,' the market value here in San Francisco, at the time of her delivery in 1917?"

6. In sustaining plaintiff's objection to the following question propounded by the defendant to the witness John A. Bishop:

"Q. I will ask you to state whether or not you know what the custom is without referring now to any particular contract, what the custom is, if you know, in regard to allowing reimbursement for services by the agent in connection with the salvaging of vessels, where he has a general contract wherein the compensation specified is a percentage of the freight earned?"

7. In sustaining plaintiff's objection to the following question propounded by the defendant to the witness John A. Bishop:

"I will ask you to state whether or not, in all the cases mentioned by you occurring with respect to the vessels named, of which Williams, Dimond & Co. were the agents, and Mr. Gray was the agent, and Evans was the agent, whether or not in each and every of those cases the general agent was allowed compensation for the services rendered by him in connection with those vessels?"

8. In sustaining plaintiff's objection to the following question propounded by the defendant to the witness John A. Bishop:

"Q. I will ask you whether or not it is the custom in all cases where the general agents

render services in connection with the calvage of the vessel, to not only [184] allow him from his principal a compensation for the general services in connection therewith, but an allowance of 2½ per cent on the total amount of disbursements in connection therewith, if the money be that of his principal, and 5 per cent if the money be that of himself?"

9. In sustaining plaintiff's objection to the following question propounded by the defendant to the witness John A. Bishop:

"Q. I will ask you to state whether or not the custom, if any, is uniform, and has been for the last twenty years in this port, whereby general agents are allowed reimbursement for the services rendered by them in connection with the salvage of vessels, where their agency contract merely specified as their remuneration a certain percentage upon the freight earned?"

10. In sustaining plaintiff's objection to the following question propounded by the defendant to the witness John A. Bishop:

"Q. I will ask you to state whether there is now, and has been for 20 years last past a custom in this port, and a uniform custom, whereby the general agent is reimbursed for services rendered by him in connection with the salvage of vessels by the owner, so far as his time and the value of his services rendered in connection therewith are concerned, where he has an agency contract, in which the only compensation speci-

fied is in respect to a percentage upon freight earned?"

11. In sustaining plaintiff's objection to the following question propounded by the defendant to the witness John A. Bishop:

"Q. I will ask you to state whether there is now and has been for 20 years last past a general custom of allowing to the agent, the general agent of a steamship line of steamers, a percentage amounting to 5 per cent on the amount disbursed by him of his own money, is his own money, where he has a general agency contract, in which the only remuneration specified therein is in respect to a percentage of freight earned?"

12. In sustaining plaintiff's objection to the following question propounded by the defendant to the witness John A. Bishop:

"Q. I will ask you if the moneys advanced by the agent are those of the owner, if then he is entitled to the commission of 2½ per cent under the same circumstances, that is, where his general agency contract is one wherein the only compensation justified is a percentage in respect to freight earned?"

13. In sustaining plaintiff's objection to the offer by defendant [185] in evidence of the following items from the "Statement of General Average, Case of the 'Sinaloa,' June 15, 1917":

"$3,165.27, C. Henry Smith—Remuneration for handling a/c
5% Com. on $63,305.54..... $3,165.27."

"Provisions $38.07, General Average, 2826.95. Advances..... $274.90

"Vessel & Owners, $35.35."

"$4,290.82. Disbursing the General Average:

With funds in hand 2½% on $8,552.19..... .... $213.80

Without funds in hand 5% $81,540.32..... .... 4,077.02

As customary..... $4,290.82"

"$11,380.74 Interest on General Average Disbursements and allowances from date of outlay until probable date of settlement, $108,388.77 at 7% per annum..... .... $11,380.74."

14. In sustaining plaintiff's objection to the offer in evidence by the defendant of the following cablegrams exchanged between the plaintiff and the defendant.

"June 16, 1916.

"Sinaloa aground near Cape Blanco in fog this morning have sent tug for assistance.

"SMITH."

"June 17, 1916.

"Alta sailed for Melbourne stop Sinaloa position very difficult stop broadwide to the beach stop leaking stop ten feet water aft hold.

"SMITH."

"June 19, 1916.

"Wilcox Peck Hughes attending average Sinaloa.

"LINDVIG."

"June 20, 1916.

"Urgent Wilcox cable chance floating Sinaloa slight stop everything possible must be done to save her.

"LINDVIG."

"June 20, 1916.

"Kindly cable amount Sinaloa insured stop Smith now at ship stop after hold flooded no water forward stop discharging cargo onto barges.

"SMITH."

"June 22, 1916.

"Steamer Sinaloa insured as follows Seven hundred [186] thousand kroners full three hundred thousand hull interest hundred thousand freight interest stop understand now prospects save ship stop condemnation must be avoided if by any means possible.

"LINDVIG."

"June 21, 1916.

"Sinaloa appointed Johnson and Higgins adjusters stop they are agents for Skuld.

"SMITH."

"June 23rd, 1916.

"Steamer Sinaloa you must adhere to my instructions appoint Wilcox Peck & Hughes who are agents main hull underwriters stop should

otherwise have no objection employ Johnson Higgins.

"LINDVIG."

"June 23, 1916.

"Believe Sinaloa may be floated according to experts stop assembling fuel equipment to go north stop vessel in a rather protected position during summer.

"SMITH."

"June 29, 1916.

"Please insure ocean going barge sent to Sinaloa value fifteen thousand dollars.

"SMITH."

"July 2, 1916.

"Covered hull insurance barge fifteen thousand dollars two per cent voyage Frisco to, steamer Sinaloa therefrom to Puget Sound or Frisco.

"LINDVIG."

"June 30, 1916.

"Please place insurance salvage equipment sent aboard Phoenix and ocean going barge to Sinaloa valued at twenty-five thousand dollars.

"SMITH."

"July 3, 1916.

"Steamer Sinaloa referring your cables 29/6 and 30/6 we have insured two barges and equipment in all 40,000 dollars value is this correct.

"LINDVIG."

15. In sustaining plaintiff's objection to the following question propounded by the defendant to the witness C. Henry Smith:

"Q. I will ask you to state whether you arranged where the vessel should be brought to when she was taken away or when she was floated."

16. In sustaining plaintiff's objection to the following question propounded by the defendant to the witness C. Henry Smith:

"Q. I will ask you to state whether or not you submitted the repairs of the vessel to different shipbuilding [187] yards here in San Francisco on the lowest bid?"

17. In sustaining plaintiff's objection to the following question propounded by the defendant to the witness Wilfred Page:

"Q. What became of the different copies of bound volume entitled 'Statement of the General Average Case of the "Sinaloa," June 15, 1917,' as they were made up, what disposition was made of them?"

18. In sustaining plaintiff's objection to the following question propounded by the defendant to the witness Wilfred Page:

"Q. I will ask you to state whether Mr. Lindvig ever thereafter or any member of his office, dissented from the item therein contained, the $3,165 allowed to Mr. Smith in connection with his services with respect to the salvaging of this vessel?"

19. In sustaining plaintiff's objection to the following question propounded by the defendant to the witness Wilfred Page:

"Q. Was there any contribution to be made by them (Dupont Company) to the general average?"

20. In sustaining plaintiff's objection to the following question propounded by the defendant to the witness Wilfred Page:

"Q. So far as the cargo was concerned, do you know whether or not Mr. Lindvig has, in fact, collected from the cargo upon the basis of including in the general average this item of $3,165, allowed to Mr. Smith?"

21. In sustaining plaintiff's objection to the following question propounded by the defendant to the witness C. Henry Smith:

"Q. As a matter of fact, at the time that bill of particulars was filed, was it true that Mr. A. O. Lindvig did not have the vouchers that supported your different accounts?"

22. In granting plaintiff's motion to strike out plaintiff's bill of particulars.

23. In sustaining plaintiff's objection to the following question propounded by defendant to the witness C. Henry Smith:

"Q. Now, as a matter of fact, Mr. Smith, so far as you can tell at the present time what are the disputed items, or the amount of them?" [188]

24. In sustaining plaintiff's objection to the following question propounded by the defendant to the witness C. Henry Smith:

"Q. I will ask you to state whether Mr. Lindvig, or anyone else connected with the plaintiff

in this case, or anybody else, has ever stated to you what the item of $12,050 has reference to which is mentioned in the bill of particulars filed by the plaintiff in this case, and as to which it is therein stated that they are sending to Christiania for details?"

25. In sustaining plaintiff's objection to the offer in evidence of the following cablegram relating to stock in the corporation owning the "Regulus" from the defendant to the plaintiff, dated January 11, 1916:

"Stock accepted letter twenty-first December."

26. In sustaining plaintiff's objection to defendant's offer in evidence of the following cablegram from the plaintiff to the defendnat, dated January 19, 1916, and relating to stock in the corporation owning the "Regulus."

"If you don't wish to overtake full amount two hundred thousand Kroner Pacific I can dispose of about one hundred thousand Kroner here please telegraph."

27. In sustaining plaintiff's objection to the offer in evidence by defendant of the following cablegram from the defendant to the plaintiff, dated January 19, 1916:

"Cannot give up any of two hundred thousand kroner stock writing."

28. In sustaining plaintiff's objection to the offer in evidence by defendant of the following letter from the defendant to the plaintiff, dated January 19, 1916:

"Referring to your cable which we received today, regarding stock in the new steamer now building at the United Engineering Works, we regret that owing to some arrangements with our friends here we cannot give up any of this stock.

"As we originally asked for not less than $100,000.00 in this steamer, we have been obliged to take very much less than we intended at the outset." [189]

29. In giving the following instruction to the jury:

"This cause has taken a course which calls upon me at this time to direct you to find a verdict in favor of the plaintiff. It is not essential that you leave your seats; you may select one of your number as foreman and have him sign the verdict."

30. In refusing to give the defendant's instruction number I, requested by defendant, and reading:

"If you find that defendant acted as agent for plaintiff in the transactions involved in this case, defendant has a right to deduct from the claim of the plaintiff any lawful claims arising out of his agency, by way of compensation, advances or reimbursements, and interest on such advances."

31. In refusing to give instruction No. 2, requested by defendant, and reading:

"In order to entitle defendant to remuneration for services rendered as agent, by way of commissions or otherwise, it is not necessary to

show an express request for the services by plaintiff as defendant's principal, but such a request may be implied from the circumstances disclosed by the evidence."

32. In refusing to give instruction No. 8, requested by the defendant, and reading:

"In case you shall find that the defendant in any particular instance, acted as plaintiff's agent without any authority to so act, or in excess of the authority given by plaintiff, but that defendant's acts were thereafter ratified by plaintiff, or that the plaintiff accepted the benefit of defendant's services, I instruct you that defendant is entitled to the same compensation and remedy for performing said acts as if he had been duly authorized to perform the same."

33. In refusing to give instruction No. 9, requested by the defendant, and reading:

"If you find that defendant has performed on his parts all the acts necessary to the accomplishment of a particular result, such as the freighting of 40,000 tons, 10% more or less, of cargo in plaintiff's vessels, for and on behalf of the du Pont de Nemours Powder Company, defendant cannot be deprived of his right to the entire compensation by the refusal or neglect of the plaintiff to thereafter perform the necessary acts on his part, whereby the contemplated result is defeated or only partly executed." [190]

34. In refusing to give instruction No. 10, requested by the defendant, and reading:

"The failure, refusal or inability of plaintiff to carry out the complete contract for the transportation of 40,000 tons, 10% more or less, of cargo for the du Pont de Nemours Powder Company does not defeat defendant's right to full compensation for negotiating this contract, nor is this right defeated by the fact, if it be a fact, that plaintiff and the du Pont de Nemours Powder Company subsequently modified, rescinded or cancelled the contract or a part thereof by mutual consent."

35. In refusing to give instruction No. 11, requested by the defendant, and reading:

"If you find that plaintiff carried out or offered to perform the agreement with du Pont de Nemours Powder Company, or a part of said agreement, with knowledge of the whole agreement, I instruct you that such conduct on the part of plaintiff constitutes a ratification of the whole agreement, and that defendant is entitled to compensation for procuring the said agreement."

36. In refusing to give instruction No. 27, requested by the defendant, and reading:

"I instruct you that, under the contract of June 29, 1914, the defendant is entitled to a reasonable commission on the freight earned by the steamers of the Baja California Company in performing the contract with the du Pont de Nemours Powder Company for the transportation from the Republic of Chile, to San Francisco, California, and elsewhere, of 40,000 tons, 10% more or less, of nitrate."

37. In refusing to give instruction No. 12, requested by the defendant, and reading:

> "If you are satisfied that defendant was originally appointed to act as general agent for plaintiff on the Pacific Coast, the facts shown by the evidence must be liberally construed in favor of a ratification by plaintiff of defendant's acts, and you may consider very slight circumstances and small matters as sufficient to raise a presumption of ratification, especially if you should also find that the defendant's acts were for the benefit of the plaintiff."

38. In refusing to give instruction No. 18, requested by the defendant, and reading:

> "Where there is a written contract between a principal [191] and an agent providing for a certain compensation to the agent for the performance by him of the services required or contemplated by the contract, and services are rendered by the agent in addition to those required or contemplated by the written contract, and in connection with transactions not included in the matters to be attended to by the agent under the written contract, and such extra services are of such a nature and were rendered under such circumstances as to imply a promise on the part of the principal to pay for the same, then and under such circumstances I charge you that the agent is entitled to recover the reasonable value of such extra services."

39. In refusing to give instruction No. 25, requested by the defendant, and reading:

"Although defendant's compensation as agent for plaintiff is specified in the contract of employment, you may nevertheless find, if you believe it to be the fact, that defendant rendered services to the plaintiff of a character different from that provided for in said contract of employment; and if you so find, then I instruct you that defendant is entitled to a reasonable compensation for such services."

40. In refusing to give instruction No, 26, requested by the defendant, and reading:

"I instruct you that the defendant is entitled to a reasonable compensation for all services not covered by the contract of June 29, 1914. In determining the value of such services you are not confined to the amounts retained by the defendant in the respective instances, but may consider the value placed by defendant upon such services as one of the circumstances determining, with all the other circumstances surrounding such services, what would be a reasonable compensation, which may be less or greater than the sums retained by defendant. In case the sum total of the amounts determined by you to be reasonable in each instance aggregates a sum equal to or greater than the sum of $70,-582.72, your verdict must be for the defendant."

41. In refusing to give instruction No. 28, requested by the defendant, and reading:

"I instruct you that the contract of June 29, 1914, between plaintiff and defendant, was an agreement with regard to a proposed steamship

line to operate steamers between Mexican and Central American ports, and West Coast of United States as well as British Columbia, and that such agreement does not govern the value of services connected with a steamship line operating steamers between South American ports and the West Coast of the United States or British Columbia. That defendant is entitled to a reasonable compensation for any services performed by him for plaintiff in connection with steamers plying between [192] ports of the United States or British Columbia and South American ports."

42. In refusing to give instruction No. 19, requested by the defendant, and reading:

"Whenever the circumstances under which services were rendered, and the character of the services performed, create a legal liability to pay on the part of the person for whose benefit the services were performed, the law implies a promise to pay for such services; and the request necessary to support such promise may be inferred from the beneficial nature of the services and the circumstances of the transaction."

43. In refusing to give instruction No. 13 requested by the defendant, and reading:

"If you find that defendant was to receive a commission for contracts made for the benefit of plaintiff and that, during the term of his agency, he procured contracts for the benefit of plaintiff, I instruct you that defendant is entitled to commissions not merely on the con-

tracts which were performed before the termination of the defendant's agency, but that defendant is also entitled to commissions on all contracts secured by him, and performed, or to be performed, by plaintiff subsequent to the termination of defendant's agency."

44. In refusing to give instruction No. 20, requested by the defendant, and reading:

"As to the item of $2,049.65 as defendant's commission on the inward freight of the "Governor Forbes,' I charge you as a matter of law that your verdict should be in favor of the defendant."

45. In refusing to give instruction No. 14, requested by the defendant, and reading:

"The bill of particulars filed by the plaintiff herein is to be considered as an amplification of his complaint, and said bill of particulars specifically disputes the following items in the defendant's accounts:

1.	Remuneration re contract of 'Regulus'	$ 6,000.00
2.	Remuneration re contract of 'Romules'	10,000.00
3.	Commission on purchase of 'Governor Forbes'.....	6,800.00
4.	Commission of 'Sinaloa' Salvage	3,165.27
5.	Commission Dupont Powder Co..	25,517.80
6.	Commission on inward freight of 'Governor Forbes'	2,049.65

[193]

7. Retention of balance stated by Mr. Smith as an estimated amount for procuring bookings of freight prior to Oct. 1, 1917. .$5,000.00

The above mentioned disputed items total the sum of $58,532.75, and these are the items which are to be considered and passed upon by you; all other items in the defendant's accounts are assumed to be correct."

46. In refusing to give instruction No. 16, requested by the defendant, and reading:

"The Court instructs the jury to find in favor of the defendant as to the item of $12,050 referred to in plaintiff's bill of particulars, for the details of which it is therein stated that the plaintiff has sent to Christiania."

47. In refusing to give instruction No. 15, requested by the defendant, and reading:

"The defendant is entitled to recover a commission on the purchase of the 'Governor Forbes' notwithstanding he may have entered into an agreement for the purchase of said vessel in November, 1916, and notwithstanding the payment of her purchase price, may have been completed in the Spring of 1917, provided you believe from the evidence that the services rendered by the defendant in connection with the cablegrams exchanged between him and the plaintiff entitled him to such a commission, and provided you believe that the omission to enter said commission upon any of the accounts presented to the plaintiff prior

to October 1, 1917, was due to inadvertence and mistake."

48. In refusing to give instruction No. 17, requested by the defendant, and reading:

"I charge you that the agency contract entered into by and between A. O. Lindvig and C. Henry Smith on June 29, 1914, had sole reference to C. Henry Smith acting as the agent for the 'A/S Baja California' in the operation of steamers between Mexican, Central America, West Coast of United States, and British Columbia ports; and I instruct you that the services rendered by C. Henry Smith in contracting for, and supervising the construction of the 'Romulus' and 'Regulus,' and in purchasing the 'Governor Forbes,' were not included within his duties as agent under said contract of June 29, 1914."

49. In refusing to give instruction No. 23, requested by the defendant, and reading:

"I instruct you that it is not necessary for the defendant [194] to prove an express promise by the plaintiff to compensate the defendant for his services in connection with the contracting and building of the 'Regulus' and 'Romulus.' It is sufficient for the defendant if he proves in this behalf that the services rendered by him in connection with the contracting and building of said vessels were outside of the scope of his duties under the agency contract of June 29, 1914, and that his services in connection with the contracting and building

of said vessels were beneficial to the plaintiff, and were of such a nature, and rendered under such circumstances as to imply a promise upon the part of the plaintiff to pay for such services."

50. In refusing to give instruction No. 24, requested by the defendant, and reading:

"If you believe from the evidence in this case that prior to the termination of the defendant's agency the employees of the defendant engaged cargo for sailings scheduled to occur within a few days subsequent to the termination of the defendant's agency, and that upon the termination of the defendant's agency his former employees removed to the newly established office of the plaintiff all records of such cargo engagements, and that thereafter when demand was made by the defendant upon the plaintiff for a statement of the cargo booked prior to the termination of the defendant's agency, the defendant at first denied that any cargo excepting a shipment of lumber by the defendant had been booked prior to the termination of the defendant's agency, and that thereafter and as a result of the defendant's demands the plaintiff admitted that some cargo had been booked but failed to disclose the entire amount of cargo booked, prior to the termination of the defendant's agency, then, and under such circumstances, I charge you that the burden of proof is upon the plaintiff to show that the defendant has retained as

payment of his commission on freight booked prior to the termination of his agency, an amount greater than the defendant is entitled to as his commissions upon the freight engaged prior to the termination of the defendant's agency."

51. In directing the jury to find a verdict in favor of the plaintiff.

52. In entering judgment against the defendant on the verdict.

WHEREFORE the said defendant and plaintiff in error prays that the judgment of the said Court be reversed.

ANDROS & HENGSTLER,
GOODFELLOW, EELLS, MOORE & ORRICK,
Attorneys for the Defendant.

[Endorsed]: Filed Dec. 12, 1919. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [195]

In the District Court of the United States in and for the Southern Division of the Northern *Division* of California, Division Two.

No. 16,124.

A. O. LINDVIG,
Plaintiff,

vs.

C. HENRY SMITH,
Defendant.

Order Allowing Writ of Error and Fixing Amount of Bond.

The defendant having filed herein and presented herewith a petition for writ of error, and an assignment of errors:

NOW, THEREFORE, on motion of Messrs. Andros & Hengstler, and Messrs. Goodfellow, Eells, Moore & Orrick, attorneys for the defendant, IT IS ORDERED that a writ of error be, and the same is hereby allowed for the review of the judgment and verdict entered herein on the 13th day of June, 1919, by the United States Circuit Court of Appeals for the Ninth Circuit, and that the amount of the bond on said writ of error be, and the same is hereby fixed at the sum of Twenty Thousand Dollars ($20,000), and that upon the giving of such bond all further proceedings in this court be suspended, stayed and superseded pending the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: San Francisco, California, December 12, 1919.

WM. C. VAN FLEET,
United States District Judge.

[Endorsed]: Filed Dec. 12, 1919. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [196]

In the District Court of the United States in and for the Southern Division of the Northern District of California, Division Two.

No. 16,124.

A. O. LINDVIG,

Plaintiff,

vs.

C. HENRY SMITH,

Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS: That we, C. Henry Smith as principal, and Globe Indemnity Company, a corporation, incorporated and existing under and by virtue of the laws of the State of New York, doing and authorized to do business in the State of California, as surety, are held and firmly bound unto A. O. Lindvig in the full and just sum of Twenty Thousand ($20,000) Dollars to be paid to said A. O. Lindvig, to which payment well and truly to be made we bind ourselves jointly and severally by these presents.

Sealed with our seals and dated this 12th day of December, 1919.

Whereas, lately in the District Court of the United States in and for the Southern Division of the Northern District of California, Second Division, a judgment was rendered against the defendant above named, and said defendant having obtained from said court a writ of error to the United States Circuit Court of Appeals for the

Ninth Circuit to reverse said judgment:

NOW, THEREFORE, the condition of the above obligation [197] is such that if C. Henry Smith shall prosecute such writ of error to effect and answer all damages and costs if he fails to make his plea good, then the above obligation shall be void; otherwise to remain in full force and effect.

HENRY C. SMITH,
Principal.

[Seal] GLOBE INDEMNITY COMPANY,
By FRANK M. HALL, (Seal)
Attorney in Fact.
By DAVID DUNCAN,
Attorney in Fact.

The foregoing bond both as to form and sufficiency of surety is hereby approved.

WM. C. VAN FLEET,
United States District Judge.

[Endorsed]: Filed Dec. 12, 1919. Walter B. Maling, Clerk. [198]

(Title of Court and Cause.)

Praecipe for Record on Writ of Error.

To the Clerk of said Court:

Sir: Please prepare transcript on writ of error as follows:

Complaint.
Amended answer.
All bills of particulars.
Verdict.
Judgment.

Bill of exceptions.
Petition for writ of error.
Assignments of errors.
Order allowing writ of error.
Bond on writ of error.
Minute order of June 13, 1919.
Writ of error, and
Citation on writ of error.
Exceptions to alleged bill of particulars, etc.
Minute order of January 7th, 1918.

ANDROS & HENGSTLER,
GOODFELLOW, EELLS, MOORE & ORRICK,
Attorneys for Defendant.

[Endorsed]: Filed Apr. 9, 1921. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [199]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

No. 16,124.

A. O. LINDVIG,
Plaintiff,

vs.

C. HENRY SMITH,
Defendant,

Certificate of Clerk U. S. District Court to Record on Writ of Error.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of

California, do hereby certify the foregoing one hundred ninety-nine (199) pages, numbered from 1 to 199, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the praecipe for record on writ of error, as the same remain on file and of record in the above-entitled cause, in the office of the clerk of said Court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is $90.60; that said amount was paid by the defendant, and that the original writ of error and citation issued in said cause are hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 9th day of May, A. D. 1921.

[Seal] WALTER B. MALING,
Clerk United States District Court for the Northern District of California. [200]

Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California, Second Division, GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between C. Henry Smith, plaintiff in error,

and A. O. Lindvig, defendant in error, a manifest error hath happened, to the great damage of the said C. Henry Smith, plaintiff in error, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the United States, the 12th day of December, in the year of our Lord one thousand nine hundred and nineteen.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern District of California.

By J. A. Schaertzer,
Deputy Clerk.

Allowed by

WM. C. VAN FLEET,
United States District Judge. [201]

Receipt of a copy of the within writ of error is hereby admitted this 12th day of December, 1919.

NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys for Defendant in Error.

[Endorsed]: No. 16,124. United States District Court for the Northern District of California. C. Henry Smith, Plaintiff in Error, vs. A. O. Lindvig, Defendant in Error. Writ of Error. Filed Dec. 13, 1919. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Return to Writ of Error.

The answer of the Judge of the District Court of the United States, in and for the Northern District of California, Second Division.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day of place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal] WALTER B. MALING,
Clerk United States District Court, Northern District of California. [202]

Citation on Writ of Error.

UNITED STATES OF AMERICA—ss.

The President of the United States, to A. O. Lindvig, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file on the Clerk's Office of the United States District Court for the Northern District of California, Second Division, wherein C. Henry Smith is the plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 12th day of December, A. D. 1919.

WM. C. VAN FLEET,
United States District Judge. [203]

Receipt of a copy of the within Citation on Writ of Error is hereby admitted this 12th day of December, 1919.

NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys for Defendant in Error.

[Endorsed]: No. 16,124. United States District Court for the Northern District of California. C. Henry C. Smith, Plaintiff in Error, vs. A. O. Lindvig, Defendant in Error. Citation on Writ of Error. Filed Dec. 13, 1919. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 3681. United States Circuit Court of Appeals for the Ninth Circuit. C. Henry Smith, Plaintiff in Error, vs. A. O. Lindvig, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filed May 9, 1921.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

C. HENRY SMITH,
Plaintiff in Error,

vs.

A. O. LINDVIG,
Defendant in Error.

Order Extending Time to and Including February 10, 1920, Within Which to File Record and Docket Cause.

GOOD CAUSE APPEARING THEREFOR: IT IS HEREBY ORDERED that the time of plaintiff in error above named within which to print the record and file and docket this cause on writ of error in the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same is hereby, extended to and including the 10th day of February, 1920.

Dated: January 10, 1920.

W. H. HUNT,

Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. 3681. In the United States Circuit Court of Appeals, for the Ninth Circuit. C. Henry Smith, Plaintiff in Error, vs. A. O. Lindvig, Defendant in Error. Order Extending Time to and Including February 10, 1920, Within Which to File Record and Docket Cause. Filed Jan. 10, 1920. F. D. Monckton, Clerk. Refiled Apr. 28, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

C. HENRY SMITH,

Plaintiff in Error,

vs.

A. O. LINDVIG,

Defendant in Error.

Order Extending time to and Including March 10, 1920, Within Which to File Record and Docket Cause.

GOOD CAUSE APPEARING THEREFOR: IT IS HEREBY ORDERED that the time of plaintiff in error above named within which to print the record and file and docket this cause on writ of error in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, extended to and including the 10th day of March, 1920.

Dated February 9, 1920.

W. H. HUNT,

Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. —. In the United States Circuit Court of Appeals, for the Ninth Circuit. C. Henry Smith, Plaintiff in Error, vs. A. O. Lindvig, Defendant in Error. Order Extending Time to and Including March 10, 1920, Within Which to File, Record and Docket Cause. Filed Feb. 9, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

C. HENRY SMITH,

Plaintiff in Error,

vs.

A. O. LINDVIG,

Defendant in Error.

Order Extending Time to and Including April 10, 1920, Within Which to File Record and Docket Cause.

GOOD CAUSE APPEARING THEREFOR: IT IS HEREBY ORDERED that the time of plaintiff in error above named within which to print the record and file and docket this cause on writ of error in the United States Court of Appeals for the Ninth Circuit, be, and same is hereby, extended to and including the 10th day of April, 1920.

Dated March 9, 1920.

WM. H. HUNT,

Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. ——. In the Circuit Court of Appeals for the Ninth Circuit. C. Henry Smith, Plaintiff in Error, vs. A. O. Lindvig, Defendant in Error. Order Extending Time to and Including April 10, 1920, Within Which to File Record and Docket Cause. Filed Mar. 9, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

C. HENRY SMITH,

Plaintiff in Error,

vs.

A. O. LINDVIG,

Defendant in Error.

Order Extending Time to and Including May 10, 1920, Within Which to File Record and Docket Cause.

GOOD CAUSE APPEARING THEREFOR: IT IS HEREBY ORDERED that the time of plaintiff in error above named within which to print the record and file and docket this cause on writ of error in the United States Circuit Court of Appeals for the Ninth Circuit, be, and same is hereby, extended to and including the 10th day of May, 1920.

Dated: April 9, 1920.

WM. H. HUNT,

Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. ——. In the United States Circuit Court of Appeals, for the Ninth Circuit. C. Henry Smith, Plaintiff in Error, vs. A. O. Lindvig, Defendant in Error. Order Extending Time. Filed Apr. 9, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

C. HENRY SMITH,

Plaintiff in Error,

vs.

A. O. LINDVIG,

Defendant in Error.

Order Extending Time to and Including June 10, 1920, Within Which to File Record and Docket Cause.

GOOD CAUSE APPEARING THEREFOR: IT IS HEREBY ORDERED that the time of plaintiff in error above named within which to print the record and file and docket this cause on writ of error in the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same is hereby extended to and including the 10th day of June, 1920.

Dated: May 10, 1920.

W. H. HUNT,

Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. ——. In the United States Circuit Court of Appeals, for the Ninth Circuit. C. Henry Smith, Plaintiff in Error, vs. A. O. Lindvig, Defendant in Error. Order Extending Time to and Including June 10, 1920, Within Which to File Record and Docket Cause. Filed May 10, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

C. HENRY SMITH,

Plaintiff in Error,

vs.

A. O. LINDVIG,

Defendant in Error.

Order Extending Time to and Including July 10, 1920, Within Which to File Record and Docket Cause.

GOOD CAUSE APPEARING THEREFOR: IT IS HEREBY ORDERED that the time of plaintiff in error above named within which to print the record and file and docket this cause on writ of error in the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same is hereby, extended to and including the 10th day of July,1920.

Dated: June 9, 1920.

HUNT,

Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. ——. In the United States Circuit Court of Appeals for the Ninth Circuit. C. Henry Smith, Plaintiff in Error, vs. A. O. Lindvig, Defendant in Error. Order Extending Time to and Including July 10, 1920, Within Which to File Record and Docket Cause. Filed Jun. 9, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

C. HENRY SMITH,

Plaintiff in Error,

vs.

A. O. LINDVIG,

Defendant in Error.

Order Extending Time to and Including August 10, 1920, Within Which to File Record and Docket Cause.

GOOD CAUSE APPEARING THEREFOR: IT IS HEREBY ORDERED that the time of plaintiff in error above named within which to print the record and file and docket this cause on writ of error in the United States Circuit Court of Appeals for the Ninth Circuit, be, and same is hereby, extended to and including the 10th day of August, 1920.

Dated: July 10, 1920.

WM. W. MORROW,

Judge of the United States Circuit Court of Appeals, for the Ninth Circuit.

[Endorsed]: No. ——. In the United States Circuit Court of Appeals for the Ninth Circuit. C. Henry Smith, Plaintiff in Error, vs. A. O. Lindvig, Defendant in Error. Order Extending Time of Plaintiff Within Which to File and Docket Cause. Filed Jul. 10, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

C. HENRY SMITH,

Plaintiff in Error,

vs.

A. O. LINDVIG,

Defendant in Error.

Order Extending Time to and Including September 10, 1920, Within Which to File Record and Docket Cause.

GOOD CAUSE APPEARING THEREFOR: IT IS HEREBY ORDERED that the time of plaintiff in error above named within which to print the record and file and docket this cause on writ of error in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, extended to and including the 10th day of September, 1920.

Dated: August 10, 1920.

WM. W. MORROW,

Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. ——. In the United States Circuit Court of Appeals, for the Ninth Circuit. C. Henry Smith, Plaintiff in Error, vs. A. O. Lindvig, Defendant in Error. Order Extending Time to and Including September 10, 1920, Within Which to File Record and Docket Cause. Filed Aug. 10, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

C. HENRY SMITH,

Plaintiff in Error,

vs.

A. O. LINDVIG,

Defendant in Error.

Order Extending Time to and Including October 9, 1920, Within Which to File Record and Docket Cause.

GOOD CAUSE APPEARING THEREFOR: IT IS HEREBY ORDERED that the time of plaintiff in error above named within which to print the record and file and docket this cause on writ of error in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby extended to and including the 9th day of October, 1920.

Dated: September 8, 1920.

WM. W. MORROW,

Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. ——. In the United States Circuit Court of Appeals, for the Ninth Circuit. C. Henry Smith, Plaintiff in Error, vs. A. O. Lindvig, Defendant in Error. Order Extending Time to and Including October 9, 1920, Within Which to File Record and Docket Cause. Filed Sep. 8, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

C. HENRY SMITH,

Plaintiff in Error,

vs.

A. O. LINDVIG,

Defendant in Error.

Order Extending Time to and Including November 9, 1920, Within Which to File Record and Docket Cause.

GOOD CAUSE APPEARING THEREFOR: IT IS HEREBY ORDERED that the time of plaintiff in error above named within which to print the record and file and docket this cause on writ of error in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, extended to and including the 9th day of November, 1920.

Dated October 7, 1920.

WM. W. MORROW,

Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. ——. In the United States Circuit Court of Appeals, for the Ninth Circuit. C. Henry Smith, Plaintiff in Error, vs. A. O. Lindvig, Defendant in Error. Order Extending Time to and Including November 9, 1920, Within Which to File Record and Docket Cause. Filed Oct. 7, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

No. ——.

C. HENRY SMITH,

Plaintiff in Error,

vs.

A. O. LINDVIG,

Defendant in Error.

Order Extending Time to and Including December 5, 1920, Within Which to File Record and Docket Cause.

GOOD CAUSE APPEARING THEREFOR: IT IS HEREBY ORDERED that the time of plaintiff in error above named within which to print the record and file and docket this cause on writ of error in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, extended to and including the 5th day of December, 1920.

Dated: November 9, 1920.

W. H. HUNT,

Judge of the United States Circuit Court of Appeals, for the Ninth Circuit.

[Endorsed]: No. ——. In the United States Circuit Court of Appeals for the Ninth Circuit. C. Henry Smith, Plaintiff in Error, vs. A. O. Lindvig, Defendant in Error. Order Extending Time to and Including December 5, 1920, Within Which to File Record and Docket Cause. Filed Nov. 9, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

C. HENRY SMITH,

Plaintiff in Error,

vs.

A. O. LINDVIG,

Defendant in Error.

Order Extending Time to and Including January 8, 1921, Within Which to File Record and Docket Cause.

GOOD CAUSE APPEARING THEREFOR: IT IS HEREBY ORDERED that the time of plaintiff in error above named within which to print the record and file and docket this cause on writ of error in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, extended to and including the 8th day of January, 1921.

Dated: December 9, 1920.

W. H. HUNT,

Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. ——. In the United States Circuit Court of Appeals for the Ninth Circuit. C. Henry Smith, Plff. in Error, vs. A. O. Lindvig, Deft. in Error. Order Extending Time to File Record and Docket Cause. Filed Dec. 9, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

No. 16,124.

C. HENRY SMITH,

Plaintiff in Error,

ve.

A. O. LINDVIG,

Defendant in Error.

Order Extending Time to and Including February 8, 1921, Within Which to File Record and Docket Cause.

GOOD CAUSE APPEARING THEREFOR: IT IS HEREBY ORDERED that the time of plaintiff in error above named within which to print the record and file and docket this cause on writ of error in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, extended to and including the 8th day of February, 1921.

Dated: January 7, 1921.

W. H. HUNT,

Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. ——. In the United States Circuit Court of Appeals, for the Ninth Circuit. C. Henry Smith, Plaintiff in Error, vs. A. O. Lindvig, Defendant in Error. Order Extending Time to and Including February ——, 1921, Within Which to File Record and Docket Cause. Filed Jan. 7, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

No. 16,124.

C. HENRY SMITH,

Plaintiff in Error,

vs.

A. O. LINDVIG,

Defendant in Error.

Order Extending Time to and Including March 8, 1921, Within Which to File Record and Docket Cause.

GOOD CAUSE APPEARING THEREFOR: IT IS HEREBY ORDERED that the time of plaintiff in error above named within which to print the record and file and docket this cause on writ of error in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, extended to and including the 8th day of March, 1921.

Dated: February 5, 1921.

HUNT,

Judge of the United States Circuit Court of Appeals, for the Ninth Circuit.

[Endorsed]: No. 16,124. Circuit Court of the United States for the Ninth Circuit. C. Henry Smith, Plaintiff in Error, vs. A. O. Lindvig, Defendant in Error. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including Mar. 8, 1921, to File Record and Docket Cause. Filed Feb. 5, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

No. 16,124.

C. HENRY SMITH,

Plaintiff in Error,

vs.

A. O. LINDVIG,

Defendant in Error.

Order Extending Time to and Including April 8, 1921, Within Which to File Record and Docket Cause.

GOOD CAUSE APPEARING THEREFOR: IT IS HEREBY ORDERED that the time of plaintiff in error above named within which to print the record and file and docket this cause on writ of error in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, extended to and including the 8th day of April, 1921.

Dated: March 5, 1921.

W. H. HUNT,

Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

Receipt of a copy of the within order is hereby admitted this 5th day of March, 1921.

NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys for Defendant in Error.

[Endorsed]: No. 16,124. In the United States Circuit Court of Appeals, for the Ninth Circuit.

C. Henry Smith, Plaintiff in Error, vs. A. O. Lindvig, Defendant in Error. Order Extending Time to and Including April 8, 1921, Within Which to File Record and Docket Cause. Filed Mar. 8, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

No. 16,124.

C. HENRY SMITH,

Plaintiff in Error,

vs.

A. O. LINDVIG,

Defendant in Error.

Order Extending Time to and Including April 21st, 1921, Within Which to File Record and Docket Cause.

GOOD CAUSE APPEARING THEREFOR: IT IS HEREBY ORDERED that the time of plaintiff in error above named within which to file and docket this cause on writ of error in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, extended to and including the 21st day of April, 1921.

Dated: April 8, 1921.

WM. H. HUNT,

Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

Receipt of a copy of within order acknowledged this 8th day of April, 1921.

NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys for Defendant in Error.

[Endorsed]: No. ——. In the United States Circuit Court of Appeals for the Ninth Circuit. C. Henry Smith, Plaintiff in Error, vs. A. O. Lindvig, Defendant in Error. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including April 21, 1921, to File Record and Docket Cause. Filed Apr. 9, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

No. ——.

C. HENRY SMITH,
Plaintiff in Error,
vs.
A. O. LINDVIG,
Defendant in Error.

Order Extending Time to and Including April 26, 1921, to File Record and Docket Cause.

GOOD CAUSE APPEARING THEREFOR: IT IS HEREBY ORDERED that the time of plaintiff in error above named within which to file the record and docket this cause on writ of error in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same

is hereby, enlarged and extended to and including the 26th day of April, 1921.

Dated: April 19th, 1921.

W. H. HUNT,

Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. ——. In the United States Circuit Court of Appeals, for the Ninth Circuit. C. Henry Smith, Plaintiff in Error, vs. A. O. Lindvig, Defendant in Error. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including April 26, 1921, to File Record and Docket Cause. Filed Apr. 19, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

C. HENRY SMITH,

Plaintiff in Error,

vs.

A. O. LINDVIG,

Defendant in Error.

Order Extending Time to and Including May 4, 1921, to File Record and Docket Cause.

GOOD CAUSE APPEARING, IT IS HEREBY ORDERED that the time of plaintiff in error above named within which to file the record and docket this cause on writ of error in the Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, enlarged and extended to and including the 4th day of May, A. D. 1921.

Dated: this 25th day of April, A. D. 1921.

W. H. HUNT,

Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including May 4, 1921, to File Record and Docket Cause. Filed Apr. 25, 1921. F. D. Monckton, Clerk.

At a stated term, to wit, the October Term, A. D. 1920, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Wednesday, the fourth day of May, in the year of our Lord one thousand nine hundred and twenty-one. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; The Honorable ERSKINE M. ROSS, Circuit Judge; The Honorable WILLIAM H. HUNT, Circuit Judge.

No. 3681.

C. HENRY SMITH,

Plaintiff in Error,

vs.

A. O. LINDVIG,

Defendant in Error.

Order Extending Time to and Including May 10, 1921, to File Record and Docket Cause.

Upon motion of Mr. F. W. Dorr, on behalf of counsel for the plaintiff in error, Mr. Irving Frank, counsel for the defendant in error, opposing said motion, and good cause therefor appearing, ORDERED time of plaintiff in error to file the record and docket the cause in the above-entitled cause be, and the same is hereby enlarged and extended to and including May 10, 1921.